

THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S REVISED TRANSCRIPT OF PUBLIC HEARING

Phoenix, Arizona

January 26, 2006

9:00 a.m.

(ORIGINAL)

Reported By:

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Certified Reporter (AZ 50127)

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1 A PUBLIC MEETING, BEFORE THE CITIZENS CLEAN
 2 ELECTIONS COMMISSION, convened at 9:00 a.m. on January
 3 26, 2006, at the State of Arizona, Clean Elections
 4 Commission, 1616 W. Adams, Conference Room, Phoenix,
 5 Arizona, in the presence of the following Board members:
 6 Ms. Marcia Busching, Phoenix, Chairperson
 7 Mr. Gary Scaramazzo, Page (Teleconference)
 8 Ms. Ermila Jolley, Yuma
 9 Ms. Kathleen Detrick, Tucson
 10
 11 OTHERS PRESENT:
 12 Mr. Todd Lang, Executive Director
 13 Ms. Paula Ortiz, Executive Assistant
 14 Ms. Colleen McGee, Fiscal Service Manager
 15 Ms. Geneva Richardson, Campaign Finance
 16 Manager
 17 Ms. Christina Murphy, Administrative Assistant
 18 III
 19 Ms. Diana Varela, Assistant Attorney General
 20 Mr. L. Gene Lemon, External Investigative
 21 Consultant
 22 Ms. Barbara Lubin, Clean Elections Institute
 23 Ms. Meredith Smyth, OMA
 24 Mr. Brian Wendell, OMA
 25 Mr. Christian Palmer, Arizona Capitol Times
 Mr. Richard Mays, Citizen
 Mr. Phil Corbell, Citizen
 Ms. Lauren Lowe, Citizen
 Ms. Janette M. Quiroz, Administrative Rules
 Analyst
 Mr. Troy Walters, Administrative Rules Analyst
 Ms. Barbara Klein, League of Women Voters
 Ms. Kim Demarchi, Citizen

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1 CHAIRPERSON BUSCHING: Commissioner Detrick.
 2 COMMISSIONER DETRICK: I move that we approve
 3 the Commission Meeting Minutes from December 14th, 2005
 4 as presented.
 5 CHAIRPERSON BUSCHING: Is there a second?
 6 COMMISSIONER JOLLEY: I will second.
 7 MR. SCARAMAZZO: I'll second that.
 8 CHAIRPERSON BUSCHING: It's been moved by
 9 Commissioner Detrick and seconded by Commissioner Jolley
 10 that we approve the 2014-2005 [sic] meeting minutes as
 11 drafted. All in favor say "aye."
 12 (Chorus of ayes.)
 13 CHAIRPERSON BUSCHING: Opposed, nay?
 14 Chair votes aye. Motion carries.
 15 Item III, Executive Director's report.
 16 MR. LANG: Thank you, Madame Chair. Good
 17 morning, Commissioners.
 18 CHAIRPERSON BUSCHING: Good morning.
 19 COMMISSIONER SCARAMAZZO: Good morning, Todd.
 20 MR. LANG: I can vouch for Commissioner
 21 Scaramazzo. He went out into the snow several times to
 22 get to the airport and highway. The weather would not
 23 be deterred. It would not let him go.
 24 COMMISSIONER SCARAMAZZO: We need the moisture.
 25 MR. LANG: We're about to set a record here.

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1 P R O C E E D I N G
 2
 3 CHAIRPERSON BUSCHING: I will call the meeting
 4 to order. This is the Citizens Clean Elections
 5 Commission. The place is 1616 West Adams, Suite 110,
 6 Phoenix, Arizona 85007. The date is Thursday, January
 7 26th, 2006 at 9:00 a.m.
 8 I want to give notice that this is a commission
 9 meeting and that the general public is invited. At any
 10 time the Commission may go into executive session which
 11 will not be open to the public for any item listed on
 12 the agenda for obtaining legal advice. All matters on
 13 the agenda may be discussed, considered and are subject
 14 to action by the Commission.
 15 I've already called the meeting to order, so
 16 the next item is No. II, approval of the December 14th,
 17 2005 Commission meeting minutes, which are the
 18 transcription that we received consisting of
 19 approximately 66 pages as I recall.
 20 Are there any additions or corrections?
 21 From my standpoint, I thought the court
 22 reporter had done an absolutely excellent job. I was
 23 very impressed with the work that had been done to
 24 prepare such a clean set of minutes.
 25 COMMISSIONER DETRICK: Madame, Chair.

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1 You see my report there. I'm obviously
 2 very excited that Secretary Brewer appointed Mr. Clark
 3 Dierks, former State Treasurer, to replace Commissioner
 4 Detrick. We are sadly going to miss Commissioner
 5 Detrick though. And I've been in contact with Secretary
 6 Brewer's staff regarding replacement of Commissioner
 7 Bardorf. They are well aware they have a very short
 8 deadline. I anticipate that Secretary Brewer will have
 9 a nice Valentine's Day gift for us which will be a new
 10 commissioner.
 11 There are a number of bills out there regarding
 12 Clean Elections. I'll be happy to talk to you about
 13 them after the meeting. I know of at least eight. Two
 14 are actually being heard in Committee today. And as you
 15 know, I make it a priority to be at the legislature
 16 whenever a Clean Elections' bill, but given we had a
 17 meeting, of course I couldn't be there. So, Michael
 18 Becker our Voter Education Manager was made a lobbyist
 19 associated with me and he is there to answer questions
 20 and will be there until I can get down there.
 21 In Shaffer. In the Shaffer lawsuit, we have
 22 some good news. The Court did grant our motion and
 23 found that the judgment by the jury shocked the judicial
 24 conscious and reduced the judgment from \$1.1 million by
 25 40 percent to \$660,000. So, Mr. Shaffer can either

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1 accept that judgment, \$660,000, or there will be a trial
2 on damages, and of course we will let you know once we
3 hear from Mr. Shaffer's lawyer.

4 CHAIRPERSON BUSCHING: A trial on damages?

5 MR. LANG: Uh-huh. With witnesses and the
6 whole thing.

7 CHAIRPERSON BUSCHING: And why is that? Did
8 the judge say that there needed to be a new trial on
9 damages?

10 MR. LANG: That's how the remitter, as I
11 understand it, I've never done a remitter. That's my
12 understanding how the remitter will work. You either
13 accept the reduction or can relitigate the issue of
14 damages only. You can't litigate liability, but
15 litigate damages.

16 CHAIRPERSON BUSCHING: The other alternative
17 would be appeal at this point too?

18 MR. LANG: Of course, both sides could appeal
19 at the trial level. That's where we are.

20 We have 59 participating candidates but that is
21 changing rapidly. We had at least 10 certifications in
22 the process right now, so that will change. By next
23 week we'll have several more, I'm sure.

24 You see the fund balance and the voter
25 education. We are making good progress on picking the

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1 MR. LANG: So we need a separate motion.

2 CHAIRPERSON BUSCHING: Is that -- but that I
3 don't see is on the agenda.

4 MS. VARELA: Yeah, it is. Redesignating
5 Commission Representative for purpose of informal
6 settlement conference. Ex-commissioner Bardorf was the
7 commission representative for purpose of that informal
8 settlement conference with Mr. Gowan. And, obviously,
9 she's no longer on the Commission so we need to formally
10 appoint a new representative. And Mr. Lemon will give
11 his presentation because he's reviewed the matter and is
12 ready to make a recommendation, but we need to have a
13 formal action re-designating a Commission
14 Representative.

15 CHAIRPERSON BUSCHING: So are we designating
16 Mr. Lemon the representative?

17 MS. VARELA: I think that's Geneva and Todd's
18 recommendation that Mr. Lemon be designated.

19 CHAIRPERSON BUSCHING: Okay. Is there any
20 discussion?

21 If not, the Chair will entertain a
22 motion.

23 COMMISSIONER DETRICK: Madame Chair.

24 CHAIRPERSON BUSCHING: Commissioner Detrick.

25 COMMISSIONER DETRICK: I move that we

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1 debate sponsors -- in fact, that's on the agenda today
2 -- and busy recruiting the final sponsors. That's going
3 well.

4 And I had a great trip to Prescott to the
5 League of Women Voters. Any excuse going to Prescott is
6 a good excuse. So, I had a great time talking to them.

7 Cindy Stutesman is doing a great job and we're
8 lucky to have her. And really that's it unless you have
9 questions.

10 CHAIRPERSON BUSCHING: Are there any questions
11 of the Executive Director or any comments?

12 If not, thank you.

13 We'll move to Item IV on the agenda, discussion
14 and possible action on the following enforcement
15 matters. First Item A: MUR 04-0020, David Gowan.
16 Re-designating Commission Representative for the purpose
17 of informal settlement conference of David Gowan.
18 Recommended dismissal of probable cause recommendation.

19 MR. LANG: Madame Chair, there's a preliminary
20 matter regarding Mr. Gowan before Mr. Lemon addresses
21 you, and it's my understanding he needs to be appointed
22 as the commission representative.

23 CHAIRPERSON BUSCHING: That Mr. Lemon does?

24 MR. LANG: Yes.

25 CHAIRPERSON BUSCHING: Okay.

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1 re-designate Mr. Lemon as the Commission Representative
2 in this matter.

3 COMMISSIONER SCARAMAZZO: Second.

4 CHAIRPERSON BUSCHING: It's been moved by
5 Commissioner Detrick and seconded by Commissioner
6 Scaramazzo that we designate Mr. Lemon as Commission
7 Representative for the purposes of informal settlement
8 conference with respect to the David Gowan matter.

9 Any further discussion?

10 If not, the Chair will call for the
11 question: All in favor say "aye."

12 (Chorus of ayes.)

13 CHAIRPERSON BUSCHING: Opposed, nay?

14 Chair votes aye. Motion carries.

15 Okay. Mr. Lemon.

16 MR. LEMON: Madame Chairman, Commissioners, I
17 am pleased to be here today and to report that I don't
18 plan to be here in the future. We have today the last
19 cases that were assigned to me for investigation or with
20 recommendations for conclusion.

21 In the Gowan matter, the issue has always been
22 his failure to identify the vendors of goods and
23 services to his campaign and the amounts he paid to
24 them. The discussions that Commissioner Bardorf had
25 with him encouraged him to get on with it and amend his

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1 campaign finance reports. That took quite a little
2 while, but in December Mr. Gowan filed amendments to his
3 campaign reports. They have been reviewed both by the
4 staff and by me, and I find and recommend that they now
5 comply with the law and that this matter be dismissed.

6 CHAIRPERSON BUSCHING: Okay. And dismissed
7 without the payment of any penalty or anything like
8 that?

9 MR. LEMON: That's correct.

10 CHAIRPERSON BUSCHING: And is that along the
11 lines of previous violations of this type?

12 MR. LEMON: That's entirely consistent with all
13 of the cases that we have had starting with the
14 Democratic candidates for Corporation Commission in
15 November to December of 2004.

16 CHAIRPERSON BUSCHING: Okay. Is there any
17 member of the public that wishes to speak to this
18 matter?

19 Any questions or comments by members of the
20 commission? Commissioner Jolley.

21 COMMISSIONER JOLLEY: I have a comment. I
22 cannot believe it took Mr. Gowan 15 months to produce
23 eight invoices that are probably on an Excel
24 spreadsheet, and I guess maybe the Citizens Clean
25 Elections needs to look at some type of penalty in

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1 information to be proprietary on his part. And it
2 certainly took us most of this year to establish, but we
3 have established and even now have an administrative law
4 judge decision that the Commission's position that the
5 actual vendors be identified and the amounts paid be
6 reported.

7 I actually think that -- I don't know what the
8 issue will be in 2006, but I don't believe it will be
9 948(c) anymore.

10 CHAIRPERSON BUSCHING: Well, that's nice to
11 hear.

12 COMMISSIONER DETRICK: Madame Chair.

13 CHAIRPERSON BUSCHING: Commissioner Detrick.

14 COMMISSIONER DETRICK: I don't know if that's
15 nice to hear. I think it will be something else which
16 I, of course, will not have to deal with it.

17 I agree with everything that's been said, and
18 2004 really was the year for this particular issue. And
19 now that the Commission has established that we do have
20 the right to have, and not just us, that the public has
21 a right to know how the money has been spent and I think
22 will be different.

23 I think Commissioner Jolley's comment about
24 establishing some type of time frame for resolution is
25 really, really unfortunate, because this is an important

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1 future situations that take more than 12 months to
2 resolve.

3 It's just a comment. Thank you.

4 CHAIRPERSON BUSCHING: Okay. Any other
5 questions or comments?

6 Commissioner Jolley, I agree with you. I think
7 I've expressed at prior meetings how I too think that
8 people should not escape violations totally unscathed,
9 that it just sends the wrong message to the candidates
10 saying that they can willfully violate the law and come
11 in later on and clean it up. And, unfortunately, that
12 defeats the purpose of providing full and fair
13 disclosure to their opposing candidates, and the public,
14 and everyone else.

15 So, I too agree that with starting this next
16 cycle, we should take a closer look at this situation
17 and perhaps come to some different conclusions on how we
18 handle it.

19 Mr. Lemon.

20 MR. LEMON: Madame Chair, my comment that I --
21 the 2004 cycle was the one where we finally focused on
22 948(c) and the requirement that vendors be identified
23 and the amounts paid. Constantine Querard, the
24 consultant to Gowan -- and it will come up again in Dial
25 -- was the one campaign consultant that considered this

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1 situation.

2 Having said that, I move in this particular
3 case, MUR 04-0020, that we accept Mr. Lemon's
4 recommendation and that we find there is no probable
5 cause in this case.

6 COMMISSIONER SCARAMAZZO: Second.

7 CHAIRPERSON BUSCHING: It's been moved by
8 Commissioner Detrick and seconded by Commissioner
9 Scaramazzo that we accept the External Investigative
10 Consultant's and Commission Representative's
11 recommendation that we find no probable cause and
12 dismiss this matter.

13 Any further discussion?

14 If not, the Chair will call for the question:

15 All in favor, say "aye."

16 (Chorus of ayes.)

17 CHAIRPERSON BUSCHING: Opposed, nay?

18 The Chair votes aye. Motion carries.

19 I have been informed that Ms. Hammann wishes to
20 call -- or be on the phone for the next matter, so we
21 will get her on the phone and then I will call Item B.

22 MS. ORTIZ: Ms. Hammann, are you there?

23 MS. HAMMANN: Yes, I am.

24 CHAIRPERSON BUSCHING: Okay. Ms. Hammann,
25 thank you for joining us. I'm Chairman Marcia Busching

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1 and we are at Agenda Item IV B, MUR 04-0043, Peggy
2 Tommey Hammann. Reconsideration of settlement
3 agreement.

4 Mr. Lang.

5 MR. LANG: Thank you, Madame Chair,
6 Commissioners. You will recall this case quite well,
7 I'm sure. Back in November the Commission issued an
8 order finding that Ms. Hammann violated the Clean
9 Elections Act in several instances; she bounced some
10 checks, she paid some fines with Clean Elections' money
11 which is inappropriate, and she didn't report the
12 receipt or expenditure of the matching funds she
13 receipted.

14 On November 2nd, the Commission issued an order
15 finding those violations and fining her \$3,576.68. Then
16 in November, the Commission took up this matter again in
17 order to discuss and approve a settlement that was
18 recommended by Commissioner Scaramazzo. That settlement
19 was for \$1,000. And as part of that settlement, it
20 would be made in payments, including a \$400 payment by
21 January 3rd.

22 Since that time, we've had very little
23 cooperation from Ms. Hammann. You have her e-mail in
24 which she disputes this. But so I, you know, obviously
25 I urge you to review that and listen to Ms. Hammann's

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1 and staff recommends that the Commission reaffirm the
2 original fine of \$3,576.78 because Ms. Hammann never
3 signed the settlement agreement and did not make that
4 first \$400 payment. If she had been so interested in
5 complying, in good faith she would have made the first
6 \$400 payment on January 3rd and she did not do so.

7 So there you have it. If, of course, you are
8 concerned about Ms. Hammann's situation, then of course
9 you can always ask her to sign the \$1,000 settlement,
10 but we recommend that you proceed on enforcement and we
11 proceed with administrative hearings in the like.

12 CHAIRPERSON BUSCHING: Thank you. Do any of
13 the members of the Commission have any questions for Mr.
14 Lang?

15 If not, are there any members of the public who
16 wish to speak to this matter? Ms. Hammann, do you wish
17 to speak?

18 MS. HAMMANN: Well, I, of course, dispute some
19 of the facts. I agreed to a settlement. I have agreed
20 to sign it and I agreed to pay the fine. The question
21 was, the week prior to Christmas I wasn't in Phoenix and
22 I made that clear. So, I offered to have them FedEx it
23 to me. I was in Flagstaff that week prior to Christmas
24 and then I left the state. I offered them to have them
25 send it to me in Flagstaff, but that was not acceptable.

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1 report after I speak. It's clear to us her e-mail is
2 not an accurate indication of what happened.

3 Geneva Richardson has been quite diligent and
4 I know our attorney Diana Varela will be happy to verify
5 that and has been quite diligent in trying to work with
6 Ms. Hammann.

7 After the December 14th meeting, Ms. Richardson
8 called Ms. Hammann on her cell phone on the 14th, 15th,
9 and 16th of December. Finally, on the 19th she spoke to
10 Ms. Hammann who was in Arizona, and she said she will be
11 in town until December 23rd. And so we and Geneva
12 encouraged her to come in and sign it. Geneva also
13 indicated she could, of course, have it Federal
14 Express'd to her. In fact, as I recall, it was Federal
15 Express'd to her.

16 MS. RICHARDSON: It was FedEx'd on the 14th.

17 MR. LANG: Geneva corrected me, it was FedEx'd
18 and e-mailed to her on December 14th, the day the
19 agreement was defined. So, she's had plenty of
20 opportunities. And we FedEx'd to the address she told
21 us to FedEx to in care of the Democratic party here in
22 Arizona.

23 Unfortunately, that didn't work out. And as
24 you can see now, Ms. Richardson is unhappy because the
25 reason it's before you here today is because I recommend

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1 It was in Phoenix and I needed to come to Phoenix which
2 was not feasible a few days before Christmas.

3 And to that, I called the 1st of January to say
4 I've been -- mid-January, said I've been a little
5 delayed, I won't be back. I'm actually returning to the
6 state this weekend and I'll appear in person and sign
7 the paperwork.

8 So the question is, why can't the staff FedEx
9 to me as I've offered the paperwork where I am? I know
10 I provided an address in Phoenix. I was going to be out
11 of state and I had my mail sent to the Democratic party
12 office where I will be picking it up when I get back.

13 But I offered to have the paperwork sent to me.
14 I'm actually in Alabama right now. Been here for the
15 last three weeks. And they won't do that. The issue
16 is, they are demanding that I appear -- that I appear in
17 Phoenix which I cannot physically do.

18 CHAIRPERSON BUSCHING: How long do you
19 anticipate being in Alabama?

20 MS. HAMMANN: I am returning this weekend. I
21 will back in the state.

22 CHAIRPERSON BUSCHING: And when you return, to
23 what location are you returning to?

24 MS. HAMMANN: I'll be returning -- I'll
25 actually go into Flagstaff, but I can be in Phoenix next

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1 week.

2 CHAIRPERSON BUSCHING: Okay.

3 MS. HAMMANN: And I'll happily sign the

4 paperwork and make payment.

5 CHAIRPERSON BUSCHING: Commissioner Jolley.

6 COMMISSIONER JOLLEY: Ms. Tommey [sic], this is

7 Commissioner Jolley. I'm just wondering why it is that

8 you didn't try to send compensation or some type of

9 payment with a letter, even though you hadn't signed the

10 settlement agreement but you had agreed with

11 Commissioner Scaramazzo on the settlement; why isn't it

12 you didn't make some type of effort to send payment

13 previously?

14 MS. HAMMANN: I guess I was waiting to see the

15 paperwork, and just -- no reason in particular. Just

16 didn't think about it.

17 When I left the state, when I talked to Ms.

18 Richardson on the 19th, I told her I was leaving the

19 state and wouldn't be available in person until what I

20 thought at that point mid-January.

21 COMMISSIONER JOLLEY: But I still think you

22 could have sent partial payment, not the total \$400, at

23 least try to make some type of effort.

24 MS. HAMMANN: Well, I could of. I just didn't

25 think of it. I was just thinking that once the

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1 next day. So I got an e-mail from Genevra that day.

2 COMMISSIONER DETRICK: But you knew that, at

3 least, we were going to consider whether or not we were

4 going to approve a settlement agreement, so there was an

5 expectation that you would have to sign a settlement

6 agreement if that's approved?

7 MS. HAMMANN: Correct. Correct.

8 COMMISSIONER DETRICK: Okay.

9 MS. HAMMANN: But I did not return to Phoenix

10 in the latter half of December. I was not physically

11 present in Phoenix during that time.

12 COMMISSIONER DETRICK: So you had already told

13 staff that you would not be present at the time we were

14 considering this on December 13th?

15 MS. HAMMANN: Yes, I did. And when Ms.

16 Richardson called me on the 19th -- or I had talked to

17 her on the 19th, I told her I would try to get to

18 Phoenix a few days before Christmas, but I didn't see

19 foresee it possible. It was a quite a trip.

20 COMMISSIONER DETRICK: But maybe this is a

21 question for Commissioner Scaramazzo, but if you knew we

22 were going to consider this on the 13th and likely we

23 would have taken some type of action, you should have

24 been prepared to address that at that time.

25 And as far as I can recollect, on December 13th

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1 paperwork was signed, I would make a payment at that

2 point.

3 And at that point, I was still -- I don't see

4 any reason why they could not send me the paperwork in

5 Alabama, but that I was told I had to sign in person.

6 CHAIRPERSON BUSCHING: Okay.

7 COMMISSIONER DETRICK: Madame Chair.

8 MS. HAMMANN: I was not attempting to evade

9 payment at all, but if you require me to appear in

10 person and sign, then I have to be in the state.

11 CHAIRPERSON BUSCHING: Okay. Thank you.

12 Commissioner Detrick.

13 COMMISSIONER DETRICK: I have one question for

14 Ms. Hammann and then I'd like to hear from staff about

15 some of this discrepancy of communication.

16 Ms. Hammann, did you know that we were

17 considering this item on December 13th, the settlement

18 agreement?

19 MS. HAMMANN: I knew that you were -- the

20 settlement agreement that I had with Commissioner

21 Scaramazzo would be brought up before the Commission and

22 I might -- it was my understanding it was approved with

23 some objection.

24 COMMISSIONER DETRICK: So you --

25 MS. HAMMANN: I read about it in the paper the

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1 we were not told you were going to be out of the state

2 or that you would not be here December 14th, perhaps, to

3 even sign to take care of this matter.

4 MS. HAMMANN: Well, I know I brought up during

5 the settlement conference that I would be out of town

6 over the Christmas week. I actually anticipated leaving

7 the week before Christmas but that got delayed. I did

8 state very clearly in the settlement conference that I

9 would be out of town -- out of state Christmas week and

10 first couple weeks of January.

11 COMMISSIONER SCARAMAZZO: But there's also the

12 discussion that took place that payments would begin

13 that first part of January.

14 MS. HAMMANN: Right.

15 COMMISSIONER SCARAMAZZO: That was quite clear.

16 MS. HAMMANN: I guess it's set in my mind that

17 once I signed the paperwork it was official and I would

18 make a payment. If they FedEx'd me the paperwork so I

19 could sign it and return it, I would have included the

20 payment, but that was not the case. I was told by Ms.

21 Richardson, no, I needed to appear in person in Phoenix

22 and sign.

23 COMMISSIONER SCARAMAZZO: I would like to hear

24 from staff on this.

25 CHAIRPERSON BUSCHING: Okay. Mr. Lang.

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1 MR. LANG: Obviously, we can quibble back and
2 forth. Ms. Hammann's recollection of events are not
3 reflective of what I believe happened. For instance, we
4 have confirmed receipts from FedEx that we sent after
5 the settlement agreement at the address she designated
6 on December 14th. She told us where to send it, we sent
7 it to that address at the Democratic party here in
8 Arizona. Gave her the opportunity to FedEx it back with
9 her signature. She didn't have to come in. She didn't
10 take advantage of that.

11 On December 13th, the day before the meeting,
12 after Geneva Richardson had e-mailed her earlier on the
13 13th, that, you know, "The meeting is coming up, are you
14 going to be able to come in? Should the Commission
15 approve the settlement agreement" -- I'm reading from
16 the e-mail -- "I will need to coordinate when you will
17 be able to sign the agreement. Please contact me."

18 And then Ms. Hammann responded, "I will not be
19 able to participate. My travel to the Gulf Coast has
20 been delayed, so I don't anticipate leaving the state
21 until next week. I will depart from Phoenix. I will
22 try to coordinate coming by the Clean Elections office."

23 I mean, that was on December 13th. She wasn't
24 leaving for Alabama for another week at least. She had
25 plenty of opportunities to come by -- by her own

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1 admission -- to come by and sign and she failed to do
2 so.

3 I don't know why. She may have a great excuse.
4 But the bottom line is, staff acted diligently. Geneva
5 Richardson acted diligently throughout this and worked
6 with her. She sent her the information. We never
7 received an address in Alabama to send this stuff to.
8 And we've done our best to work with her and we feel
9 that she wasn't diligent in return.

10 MS. VARELA: I'd just like to add that the
11 agreement was FedEx'd on the 14th after the Commission
12 had approved it, but it was also sent by Geneva to Ms.
13 Hammann by e-mail, both a copy of the settlement
14 agreement that was approved and a letter notifying Ms.
15 Hammann that it had been approved.

16 So, even if she wasn't going to come to Phoenix
17 to get her mail at the address she designated at the
18 Democratic party headquarters, she had it by e-mail.
19 She just needed to print it out and get it back to
20 staff. And that's all been documented here in the
21 e-mail.

22 MS. HAMMANN: I was told I had to appear in
23 person and sign. I had to come to the Clean Elections'
24 office and sign the paperwork in person. And that was
25 hard getting back to Phoenix, and I did attempt to get

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1 to Phoenix the week before Christmas. It was just
2 impossible.

3 CHAIRPERSON BUSCHING: Okay. Thank you.

4 MS. HAMMANN: I was five-and-a-half hours away.

5 CHAIRPERSON BUSCHING: Thank you, Ms. Hammann.
6 Let me see if there's anyone else from the public that
7 wishes to speak to this matter. No.

8 All right, let's turn to discussion by the
9 Commissioners of this matter then. I'd like to hear
10 from Mr. Scaramazzo. You were the one that negotiated
11 the settlement in the first place.

12 COMMISSIONER SCARAMAZZO: Correct.

13 CHAIRPERSON BUSCHING: What's your thinking at
14 this point?

15 COMMISSIONER SCARAMAZZO: I'm disappointed
16 we're still dealing with this. I felt that we had an
17 agreement, we would be able to go ahead and rectify this
18 situation, that payment would begin in January and in
19 March, and we would conclude that part of it and move on
20 to other business. So, I'm frustrated that we're still
21 sitting here playing a tag game trying to catch up with
22 Kathy [sic].

23 She stated emphatically in our conference
24 meeting that we should mail everything to the address it
25 was sent to. I take that at face value and say we've

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1 done what we're supposed to do. I put the onus back on
2 her to make sure this thing was remedied and it taken
3 care of.

4 CHAIRPERSON BUSCHING: Okay. So, is it your
5 inclination to agree with staff that we should
6 reconsider the settlement agreement and re-impose the
7 original penalty?

8 COMMISSIONER SCARAMAZZO: I think that -- I
9 think I'm willing to go back to the drawing board on
10 this. Whether the original penalty is something -- I'd
11 like to, I guess, ask Kathy [sic] whether she has the
12 means to pay the fine just get it taken care of and be
13 done with it.

14 I'm not inclined to spread this thing out and
15 go ahead and have payments anymore, because I don't feel
16 comfortable with that.

17 CHAIRPERSON BUSCHING: You mean, Ms. Hammann?

18 COMMISSIONER SCARAMAZZO: Excuse me. Yes.
19 Excuse me.

20 MS. HAMMANN: Yeah, I do have the means to pay
21 the fine. Over the month of February, I can knock the
22 whole thing out. I'll have it all done, hopefully, by
23 the end of February. I can pay the entire \$1,000
24 probably in two payments.

25 CHAIRPERSON BUSCHING: Well, I suppose we could

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1 structure a settlement agreement whereby if the
2 agreement is signed and paid before the end of February,
3 well then, it could be for the lesser sum. And if it's
4 not, well then, the original penalty would go into
5 effect.

6 MS. HAMMANN: I'd be agreeable to that. I'll
7 be back in the state. I'm actually coming in this
8 weekend. I don't know when I'll be in Phoenix, you
9 know, some day next week. I'm not trying to being
10 evasive there, I just don't know when I'll be able to
11 travel down there. But, I will appear in person and
12 sign the paperwork and make payments.

13 CHAIRPERSON BUSCHING: I don't think the
14 Commission is requiring you to appear in person. I
15 think the issue is more that you do sign the settlement
16 agreement and you do make the payments.

17 MS. HAMMANN: And I'm more than willing to do
18 that.

19 CHAIRPERSON BUSCHING: And return them to the
20 Commission of course.

21 MS. HAMMANN: Correct.

22 CHAIRPERSON BUSCHING: Mr. Lang.

23 MR. LANG: Madame Chair, thank you.

24 Ms. Hammann, why don't you tell us for
25 the record here while we are all here where you would

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1 support this at all.

2 CHAIRPERSON BUSCHING: Okay. Any other
3 discussion?

4 MS. HAMMANN: This is Peggy Hammann again. I
5 mean, I can pick up the paperwork in Phoenix sometime
6 next week, sign it, and walk it over to the office. I
7 don't know if it will be Tuesday, Wednesday or Thursday
8 when I get to Phoenix, but I will certainly be there and
9 make the payment.

10 CHAIRPERSON BUSCHING: Okay.

11 MS. HAMMANN: I don't know to FedEx to me on
12 the Gulf Coast today or tomorrow will really work,
13 because I'm actually flying out of New Orleans back to
14 Flagstaff.

15 CHAIRPERSON BUSCHING: Okay. Any other
16 discussion?

17 If not, the Chair will entertain a motion.

18 Well then, let's have some further
19 discussion.

20 COMMISSIONER DETRICK: Madame Chair, I'll make
21 a motion.

22 CHAIRPERSON BUSCHING: Commissioner Detrick.

23 COMMISSIONER DETRICK: I move that we
24 reconsider the settlement agreement in MUR 04-0043 and
25 that we reinstate the original penalties.

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1 like us to send the agreement and we will send it
2 Federal Express with bells on it.

3 MS. HAMMANN: It would do no good to send me an
4 agreement right now, because I'm leaving -- I'm in
5 Alabama with my parents right now and I'm leaving this
6 weekend, so it wouldn't get to me.

7 CHAIRPERSON BUSCHING: Well, this is Thursday.
8 It could go out today and you could have it tomorrow.

9 MS. HAMMANN: Okay. Well, tomorrow morning I'm
10 leaving for New Orleans. I'll be there until Sunday
11 when I fly out to Arizona. I don't know if it's
12 feasible to send me a FedEx if it will get there Friday
13 or Saturday.

14 COMMISSIONER DETRICK: Madame Chair.

15 CHAIRPERSON BUSCHING: Commissioner Detrick.

16 COMMISSIONER DETRICK: To tell you the truth,
17 this is very, very disappointing. I think -- I
18 personally do not support extending this and I support
19 going back to the original fine. And I think Ms.
20 Hammann had every opportunity to address this. She had
21 every opportunity to talk to staff about where she
22 wanted the settlement agreement mailed. She had every
23 opportunity to at least submit a token of good faith.
24 She hasn't done any of this. And although, with all due
25 respect to Mr. Scaramazzo's concerns, I just can't

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1 CHAIRPERSON BUSCHING: Is there a second?

2 COMMISSIONER JOLLEY: I'll second that.

3 CHAIRPERSON BUSCHING: It's been moved by
4 Commissioner Detrick and seconded by Commissioner Jolley
5 that we reconsider the original settlement agreement and
6 reinstate the original penalties.

7 Any further discussion by members of the
8 Commission?

9 If not, the Chair will call for the question:

10 All in favor say "aye."

11 (Chorus of ayes.)

12 CHAIRPERSON BUSCHING: Chair votes aye. Motion
13 carries.

14 Thank you, Ms. Hammann.

15 MS. HAMMANN: Okay. Thank you. I'll file an
16 appeal. I don't know what the process will be, but I'll
17 check on this when I get back this week.

18 MS. VARELA: Actually, Ms. Hammann, you've
19 already requested an appeal hearing with the Office of
20 Administrative Hearing, so we will just be -- we had
21 vacated that. We thought we were going to settle it.
22 We'll just be rescheduling that. You've already
23 requested your appeal.

24 MS. HAMMANN: Okay.

25 MR. LANG: Thank you.

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1 MS. VARELA: Thank you.
 2 CHAIRPERSON BUSCHING: Thank you.
 3 Move on to Item C on the agenda. Item IV
 4 C, MUR 04-0077, Jeff Dial, dismissal recommendation.
 5 MR. LEMON: The Jeff Dial matter is one that
 6 was assigned to me. If you were to recall way back, it
 7 was Candidate Dial that purchased tables and chairs and
 8 gazebos. And all of that we disposed of but found that
 9 he had used Constantine Querard in his campaign and
 10 reported payments to Mr. Querard but not onward to the
 11 vendors of goods and services of the campaign.
 12 Finally, Mr. Dial has amended his campaign
 13 finance reports. They are now in compliance with the
 14 requirements of 948(c). And my recommendation at this
 15 point is that the Jeff Dial matter be dismissed.
 16 CHAIRPERSON BUSCHING: Okay. Thank you.
 17 Is there any member of the public that
 18 wishes to speak to this matter?
 19 Any questions or discussion by members of the
 20 Commission?
 21 If not, the Chair will entertain a motion.
 22 Commissioner Jolley.
 23 COMMISSIONER JOLLEY: Yes, I will move that in
 24 the matter MUR 04-0077, Jeff Dial, that we approve the
 25 dismissal on this matter according to the External

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1 Investigative Consultant.
 2 COMMISSIONER DETRICK: Second.
 3 CHAIRPERSON BUSCHING: It's been moved by
 4 Commissioner Jolley and seconded by Commissioner Detrick
 5 that we approve the External Investigative Consultant's
 6 recommendation and dismiss this matter. Any further
 7 discussion?
 8 If not, the Chair will call for the question:
 9 All in favor, say "aye."
 10 (Chorus of ayes.)
 11 CHAIRPERSON BUSCHING: Opposed, nay?
 12 Chair votes aye. Motion carries.
 13 Next item is Item IV D, MUR 04-0079, Rick
 14 Murphy, reason to believe recommendation.
 15 Mr. Lang.
 16 MR. LANG: Thank you, Madame Chair,
 17 Commissioners. You have before you a statement of
 18 reasons of the Executive Director that I prepared in
 19 this matter. This is MUR 0079, but as you recall, this
 20 is closely related to MUR 0029. That case was dismissed
 21 after receiving legal advice by the Commission.
 22 Since that time, complainant Mr. Phil Hanson
 23 filed a new complaint on October 11th regarding the
 24 issue that has actually come up in these other
 25 matters -- the issue in Dial, and in Gowan, and then

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1 previously in the Rosati matter -- and that comes down
 2 to the issue of the 16-948(c) requirement that details
 3 be provided when subcontractors are used, in this case
 4 Mr. Querard.
 5 On October 11th that complaint was filed. On
 6 October 24th, the Respondent responded -- and that's
 7 attached to Exhibit B -- that was his attorney, Chris
 8 Moeser -- I don't see Mr. Moeser here today -- and again
 9 it regards the detail as you can see under part two, the
 10 alleged violation.
 11 There was \$20,566.36 paid to Mr. Querard for
 12 so-called, quote, "mailing," quote, "signs," quote,
 13 "automated calls", but in all those cases subcontractors
 14 were used and the report fails to disclose who provided
 15 the goods and services, what the postage was, the
 16 printer, the graphic designer and the like.
 17 Therefore, the detail required by 16-948(c) was
 18 not met and that requires: "The candidate or a person
 19 authorized under Subsection B of this section shall pay
 20 monies from a participating candidate's campaign account
 21 directly to the person providing goods or services to
 22 the campaign and shall identify, on a report filed
 23 pursuant to article 1 of this chapter, the full name and
 24 street address of the person and the nature of the goods
 25 and services and compensation for which payment has been

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1 made."
 2 That was not done here, so I found a reason to
 3 believe that a violation of the Act has occurred.
 4 Like the other matters, I do not think
 5 Representative Murphy or any of the folks had any
 6 intention to violate the Act, but nonetheless I feel a
 7 violation has occurred.
 8 CHAIRPERSON BUSCHING: Okay. Thank you. Any
 9 member of the public that wishes to speak to this
 10 matter?
 11 Okay. Any questions or comments by members of
 12 the Commission?
 13 If not, the Chair will entertain a
 14 motion.
 15 COMMISSIONER DETRICK: Madame Chair.
 16 CHAIRPERSON BUSCHING: Commissioner Detrick.
 17 COMMISSIONER DETRICK: I move that we accept
 18 the recommendation of the Executive Director in MUR
 19 04-0079 and that we do find there's a reason to believe
 20 violation of the Act has occurred.
 21 CHAIRPERSON BUSCHING: Is there a second?
 22 COMMISSIONER JOLLEY: I will second that.
 23 CHAIRPERSON BUSCHING: It's been moved by
 24 Commissioner Detrick and seconded by Commissioner Jolley
 25 that we accept the recommendation of the Executive

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1 Director and find reason to believe a violation of
2 statute or rule occurred.

3 Before we vote, I guess, I would just like to
4 say that this, like all the others, is a matter where if
5 the detail is provided we can dispense with this very
6 quickly and it does not need to be a long, drawn-out
7 proceeding, costly or timely -- time-intensive for the
8 candidates.

9 So I think this is just another indication
10 where we are treating candidates similarly that are in
11 similar situations and doing what, unfortunately, we
12 need to do. And that is provide an open and
13 full-disclosure system for the public. So I will
14 support the motion in this case.

15 Any other questions or any other discussion
16 before we vote on the motion?

17 If not, I'll call for the question: All in
18 favor, say "aye."

19 (Chorus of ayes.)

20 CHAIRPERSON BUSCHING: Opposed, nay?

21 Chair votes aye. Motion carries.

22 Next item, Item IV E, MUR 04-0076, Ken
23 Chevront, discussion and possible action on proposed
24 settlement agreement.

25 Mr. Lang.

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1 You may recall that I -- that I found his
2 initial campaign finance report to have included \$330
3 for postage to the U.S. Post Office. He subsequently
4 amended that report, deleted the \$330 to the post office
5 and reported his payment to the bank on his Visa or
6 MasterCard, whatever it was, for the postage. That, of
7 course, is -- is not correct.

8 Mr. Chevront admits that in the settlement
9 agreement and the fine under our rule for that
10 inaccurate reporting would be \$500. The settlement
11 agreement reached and my recommendation is that he pay a
12 penalty of \$250 to which he has agreed.

13 And I have to say that he has been cooperative.
14 I have met with Mr. Chevront and his counsel, he's
15 forthcoming, he's furnished the information that we've
16 requested, and so I -- I've concluded to recommend to
17 you that this is a fair settlement agreement in this
18 matter.

19 CHAIRPERSON BUSCHING: Okay. Thank you.

20 Is there any members of the public that
21 wish to speak to this matter?

22 Any questions or comments by members of the
23 Commission?

24 If not, the Chair will entertain a
25 motion.

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1 MR. LANG: Actually, Mr. Lemon will be
2 discussing this one.

3 MR. LEMON: This is my very last matter.

4 MR. LANG: Sadly.

5 MR. LEMON: You may recall that I made a reason
6 to believe finding in the 04-0076 recommendation to the
7 Commission and the Commission approved it because of the
8 curious transactions in the Chevront Committee
9 Campaign.

10 We have, I think, been thorough and diligent in
11 our exploration of the alleged violations. And earlier
12 in January took the deposition of Wally Straughn who was
13 running a joint campaign with Ken Chevront and it was
14 their joint mailings that led to the suggestion that Mr.
15 Chevront had engaged in spending prior to the time he
16 was funded.

17 In all honesty, I cannot establish that any
18 violation of the Act occurred with regard to that. And
19 there was also the suggestion that Mr. Chevront had
20 spent more than the sum of his personal monies in early
21 contributions, and that cannot be established either.

22 Mr. Chevront wants to conclude this matter and
23 has agreed to the settlement that is before you that I
24 recommend. It is subject to the approval of the
25 Commission.

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1 COMMISSIONER DETRICK: Madame Chair.

2 CHAIRPERSON BUSCHING: Commissioner Detrick.

3 COMMISSIONER DETRICK: I think it's only
4 fitting I should make a motion in Mr. Lemon's last case
5 since it's my last case on the Commission. And so,
6 therefore, I will move that we approve the settlement
7 agreement recommended by Mr. Lemon in MUR 04-0076.

8 CHAIRPERSON BUSCHING: And is there a second?

9 COMMISSIONER JOLLEY: I will second that.

10 CHAIRPERSON BUSCHING: Okay. Thank you. It's
11 been moved by Commissioner Detrick and seconded by
12 Commissioner Jolley that we approve the settlement
13 agreement in the matter of Ken Chevront, MUR 04-0076.

14 Any further discussion?

15 So fitting, yes.

16 All in favor, say "aye."

17 (Chorus of ayes.)

18 CHAIRPERSON BUSCHING: Opposed, nay?

19 Chair votes aye. Motion carries.

20 COMMISSIONER SCARAMAZZO: Madame Chair.

21 CHAIRPERSON BUSCHING: Commissioner Scaramazzo.

22 COMMISSIONER SCARAMAZZO: Just for the record,
23 I'd like to state that over the phone it is possible to
24 hear to how depressed Gene is over there.

25 CHAIRPERSON BUSCHING: Okay. I don't know what

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1 to respond to that.

2 COMMISSIONER SCARAMAZZO: No need to.

3 CHAIRPERSON BUSCHING: Moving on to Item V,

4 discussion and possible approval on the Final Exempt

5 Rulemaking Amendments For Substantive and Technical

6 Changes to all the rules listed there.

7 MR. LANG: Madame Chair, Geneva Richardson has

8 been quite diligent in preparing this, so I think she's

9 best situated to make a presentation to the Commission.

10 CHAIRPERSON BUSCHING: Okay. Ms. Richardson.

11 MS. RICHARDSON: Good morning, Commissioners.

12 This was part of the 2004 cleanup of the rules. These

13 were the ones that we needed to notice for 60 days for

14 public comments. They have already been pre-cleared, so

15 we wanted to go through the step to make sure all of our

16 rules are good to go.

17 The Commission proposed amendments on November

18 3rd and properly noticed them for 60 days. In the

19 60-days public comment period, we received no public

20 comment. So, all it needs is for approval today and

21 we'll file a final exempt rulemaking package with the

22 Secretary of State's office.

23 CHAIRPERSON BUSCHING: Ms. Richardson, where in

24 the context of this is the rule about filing an Excel

25 spreadsheet?

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1 MS. RICHARDSON: That's actually in a separate

2 rulemaking process, which has been through the process

3 and actually final in its amendment and pre-cleared by

4 the Department of Justice.

5 CHAIRPERSON BUSCHING: And will the Commission

6 need to once again approve that?

7 MS. RICHARDSON: No, we've already been through

8 all of the processes for that. So that's good to go as

9 far as I know.

10 CHAIRPERSON BUSCHING: So, and it has been

11 transmitted to the Secretary of State or has not?

12 MS. RICHARDSON: It has been.

13 CHAIRPERSON BUSCHING: Okay. Which means that

14 the public is now in a position to start filing Excel

15 spreadsheets or not?

16 MS. RICHARDSON: We are waiting on the

17 Secretary of State's office for that because they have

18 to pre-clear the actual spreadsheet.

19 CHAIRPERSON BUSCHING: Okay. All right. Thank

20 you.

21 Any other questions for Ms. Richardson?

22 Is there any member of the public that wishes

23 to speak to this matter?

24 If not, any discussion or comments by members

25 of the Commission?

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1 If not, the Chair will entertain a

2 motion.

3 COMMISSIONER JOLLEY: Madame Chair.

4 CHAIRPERSON BUSCHING: Commissioner Jolley.

5 COMMISSIONER JOLLEY: Yes. I will move that we

6 approve the final exempt rulemaking amendments for

7 substantive and technical changes to the rules as

8 stated.

9 CHAIRPERSON BUSCHING: Okay. Is there a

10 second?

11 COMMISSIONER DETRICK: Second.

12 COMMISSIONER SCARAMAZZO: Second.

13 CHAIRPERSON BUSCHING: It's been moved by

14 Commissioner Jolley and seconded by Commissioner Detrick

15 that we approve the final rulemaking amendments for

16 substantive and technical changes to the rules listed.

17 Any further discussion?

18 If not, the Chair will call for the question:

19 All in favor say "aye."

20 (Chorus of ayes.)

21 CHAIRPERSON BUSCHING: Opposed, nay?

22 Chair votes aye. Motion carries.

23 Move to Agenda Item VI, discussion and possible

24 action on the following substantive policy statements:

25 A) No. 11, reporting travel-related expenditures.

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1 Mr. Lang.

2 MR. LANG: Thank you, Madame Chair. Actually,

3 the way staff prepared these documents is in a combined

4 fashion, so you have before you Versions A, B, and C

5 which are the primary ones for consideration. And then

6 you also have some additional ones -- or should have

7 some additional ones -- that were based on public

8 comment; one from Mr. Phil Corbell and the other from

9 Ms. Kim Demarchi. I think both of those folks are here

10 to comment. But, if with your permission, I would like

11 to talk about them as a group.

12 CHAIRPERSON BUSCHING: Okay.

13 MR. LANG: The first one, Version A, is --

14 actually, it's the combined version. It's the complete

15 version. And what it does is it -- what we've done is

16 taken into account the concerns raised by folks, and as

17 you recall, those concerns were all over the gamut and

18 they weren't based on party. I think they were based on

19 personal situation.

20 So what we've done is cleanup the policy

21 statement grammatically but primarily changed it to take

22 into account private plane owners. You can see those

23 changes primarily in 13. And key is 13(B), that's the

24 area where the mileage you have two choices, and that's

25 why we call this version the combined option.

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1 The other options are either aeronautical
2 mileage reimbursement or rental rate. If you look at B,
3 it gives you the choice. You can either be paid by the
4 stated mile reimbursement rate for airplane travel or
5 you can also do it at the airplane rental rate.

6 The issues here are trying to find a situation
7 -- as you recall, our old rule had specific references
8 to particular prices that were available at that time.
9 It became too cumbersome and out of date far too quickly
10 to use it that way. So, what we've done here is make a
11 general reference to rental rate, whatever works best
12 for them.

13 The idea is to facilitate the use of airplanes,
14 make it easier for folks to use airplanes, but also at
15 the same time acknowledge that they have real value and
16 must be accounted for. And that's what the substantive
17 policy statement attempts to do.

18 CHAIRPERSON BUSCHING: Okay. Any questions by
19 members of the Commission of Mr. Lang?

20 If not, is there any member of the public that
21 wishes to speak to this matter?

22 Sir, state your name and come to the table,
23 please.

24 MR. CORBELL: Madame Chair, I'm Phil Corbell
25 and I'm a master instructor pilot at the FAA and safety

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1 they're doing this as a hobby or fun.

2 I would like to associate this to a lot of
3 people that have hobbies. There's some people out there
4 that do graphic design and make up websites and do it
5 great and get paid for it. There's other people that do
6 it as a hobby, they don't get paid for it and does it at
7 home. If a person that does it at home makes up a Web
8 page for a candidate, there's no charge and they do not
9 have to claim it as a campaign expense, they can do it
10 as a volunteer. But if the campaign goes out and pays a
11 graphic designer to set up a website or something else,
12 then I understand they need to claim that as a campaign
13 expense.

14 I do understand you're trying to make this a
15 level playing field. But as this presently stands, you
16 have disenfranchised approximately 30,000 voters in this
17 state that happen to fly airplanes. They're not allowed
18 to volunteer their talents or hobbies to help a
19 candidate of their choice.

20 Specifically, on the federal regulation that
21 was passed out, this is federal regulation, it's Part
22 61 -- and let me just make sure I give you the titles on
23 that -- Part 61 is about certification of pilots, flight
24 instructors, or ground instructor. This is Subpart E,
25 which pertains to just private pilots. And I'm

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1 counselor volunteer for the FAA. And I come here as a
2 citizen and mainly it's to help the Commission
3 understand federal regulations as it pertains to private
4 pilots. The document you have there, I've looked at all
5 the changes and I do believe the changes I've put in
6 blue on the second page need to be added to conform with
7 federal regulations. And here's copies that they
8 prepared for me, I guess, of the federal regulation.

9 Essentially, if I can explain it in some simple
10 terms before I get to the technical part of it, pilots
11 are classified by either private pilots -- like you
12 having a driver license -- or classified as commercial
13 or airline transport pilot that is a professional pilot
14 that makes his living flying aircraft. This is such as
15 a bus driver, a truck driver but has to get a commercial
16 driver's license.

17 The FAA is very strict on this. They require
18 higher medical standards for people that are going to
19 fly professional. If some of the bigger aircraft, if
20 you're going to fly jet aircraft, you have to have a
21 higher rating. Private pilots can't do that. So, if
22 you would think of an airplane, and doesn't matter how
23 it's used, it's based on who the pilot is in that
24 aircraft. You have a car in your garage, they may have
25 a plane in the garage. But they're private pilots,

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1 specifically looking at 61.113, Private Pilot Privileges
2 and Limitations: Pilot in command. Paragraph A and C
3 are the pertinent paragraphs.

4 Paragraph A says: "Except as in the provisions
5 below, no person who holds a private pilot certificate
6 may act as a pilot in command of an aircraft that is
7 carrying passengers or property for compensation or
8 hire; nor may that person, for compensation or hire, act
9 as a pilot in command."

10 That means a private pilot cannot go out and
11 you cannot pay him to fly a document up to Flagstaff or
12 down to Tucson.

13 And compensation is more than just money. If I
14 can give you an example. Somebody hired a corporate
15 company to fly a passenger up to Flagstaff in Arizona.
16 The pilot that was going to fly it got sick, he was a
17 professional pilot. So he asked his friend who was a
18 private pilot: Would you fly these people up there?
19 The guy says: Oh, yeah. And, obviously, he can't be
20 paid. So he flew them up there.

21 The problem is, one company paid the charter
22 company for the trip. The pilot did not get paid, but
23 the FAA suspended that pilot's license for one year
24 because he was getting flying time.

25 Also, the FAA requires rules that you have to

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1 do three takeoffs and three landings every 90 days in
2 order to fly passengers. The fact that he got a takeoff
3 and landing that helped him meet those requirements,
4 that's compensation as far as the FAA is concerned.

5 So, they are very strict. You can go out and
6 fly for fun, you can fly your friends, you cannot fly
7 professionally and be paid.

8 It doesn't matter that you don't get paid. If
9 it's one organization pays another organization for that
10 service -- and as stated in here, if a pilot can't
11 accept money, then money will be paid by the campaign to
12 the Clean Elections Commission. Somebody is getting
13 paid. Though that pilot didn't as a volunteer, he can
14 lose his license. And some of these people work four
15 and five years to get the license. You can usually do
16 it in a year. But that's pretty rough.

17 What you can do is go out with your friends,
18 all of us can climb in an airplane with a private pilot.
19 We can fly to Tucson. But the rules state that either
20 the volunteer has to pay all the expenses or he can
21 share them equally. They even state what they can
22 share. If you look at paragraph C, "A private pilot may
23 not pay less than the pro rata share of the operating
24 expenses of a flight with passengers, provided the
25 expenses involve only fuel, oil, airport expenditures,

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1 everybody will pay their equal share."

2 Additionally, the pilot's share should not and
3 cannot be considered an in-kind contribution even though
4 it's a volunteer thing. Just flying from here to
5 Tucson, his fuel -- his share of the fuel may exceed,
6 the price of gas today. The limitations -- and if he
7 drove his own car down there and took the candidate, he
8 wouldn't have to do anything about that.

9 So, in that instance, I'm saying there
10 shouldn't be in-kind expenses. Just like I think the
11 Clean Elections' policy provides for accountants and
12 lawyers, they can provide their professional services
13 but it's not an in-kind expense. If they do it for free
14 for a candidate, that's because you want to make sure
15 things are done right.

16 So, this is what I'm offering to you. This
17 keeps you in accordance with the federal regulations.
18 It does not take a pilot with just a private license and
19 flies for fun and he says I'll fly you down to Tucson or
20 up to Flagstaff, he won't have the federal aviation
21 coming down and withdrawing his license because of your
22 policy provisions.

23 Again, if it's a commercial pilot or transport
24 pilot, if they're flying a jet aircraft, then I have no
25 problem with all of your submissions. But I think the

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1 or rental fees."

2 So we could go out, rent an airplane, we could
3 fly to Tucson and all of us would have to pay an equal
4 share for fuel, and rental cost of the airplane, and
5 landing fees. Not allowed to charge for anything else.
6 And the pilot must pay for his own. The candidate must
7 pay his own share. And every one of us would have to
8 pay our own share. That way, the pilot doesn't lose his
9 license. And he is, after all, a volunteer whether he
10 wants to fly a friend or somebody else.

11 I have no problem with the regulations that you
12 put them out for professional pilots. I have no problem
13 with the fact you want people to pay a fair share for a
14 rental aircraft even if it's a privately owned aircraft.
15 That privately own aircraft, the 172, and the local FBO
16 rents the 172 for a hundred dollars per hour, that's
17 fine. But the problem is, got to be divided up equally
18 amongst everybody on board and nobody else can be paid
19 for that service.

20 So the candidate's campaign could, I believe,
21 pay their share from his campaign expense and that would
22 be legitimate. Thus, the items in blue in all
23 situations, and except as G below, and that's paragraph
24 G is talking about a pilot if he's a private pilot. It
25 says, "In that instance you follow FAA regulations and

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1 one little paragraph you have to exempt it. You have to
2 realize we have about 30,000 pilots in Arizona. At any
3 one time, probably about half of those are private
4 pilots. Maybe 25 to 30 percent of them do not have the
5 appropriate medical to fly as a commercial pilot or a
6 transport pilot. So you could be talking a good 20- or
7 25,000 citizens out there that fly for fun. And just
8 like I'd like to give my neighbor who is running for
9 office a ride to the local meeting, they want to use
10 their airplane and fly to a meeting down in Flagstaff or
11 something.

12 You need to try and make it a level playing
13 field for the candidates. You need to make sure you
14 don't affect the citizens of your state and say you
15 can't use your talents that you've chosen.

16 CHAIRPERSON BUSCHING: Thank you.

17 MR. CORBELL: If you have any questions.

18 I am here more -- I don't want to say as
19 an expert. I did contact the FAA and I provided them
20 everything that was submitted in red and they said, hey,
21 private pilots could get in trouble. They said a
22 volunteer is a volunteer, nobody should be compensated
23 for a volunteer's action. I submitted my proposed
24 change to make sure if that was in accordance and they
25 weren't able to get back to me today, but I do believe

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1 it comports with federal regulations.
 2 If you have any questions, I'll be here the
 3 rest of the meeting and happy to answer any of them.
 4 CHAIRPERSON BUSCHING: Thank you, Mr. Corbell.
 5 Mr. Lang.
 6 MR. LANG: I have a question for Mr. Corbell if
 7 I might.
 8 CHAIRPERSON BUSCHING: Yes.
 9 MR. LANG: We wrote this with the intent that
 10 if there was a problem with payment or compensation,
 11 instead of paying you, say you're the pilot, the
 12 campaign could pay the equivalent value. Not paying
 13 you, but to distribute the money or to reflect the value
 14 of what is received, they can pay that money to the
 15 fund. And you expressed some concerns about that, but I
 16 didn't see in the regs where there's a problem with that
 17 because you're not being compensated.
 18 MR. CORBELL: It says, "Won't fly for
 19 compensation or hire." That's what the regulation says.
 20 And I'm letting you know that the interpretation by the
 21 FAA says that if anybody's compensated, then that pilot
 22 is flying as a professional pilot. He flew a flight and
 23 somebody out there made money on it, and that's what a
 24 professional does.
 25 MR. LANG: Where is that interpretation?

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1 MR. CORBELL: The interpretation is not here.
 2 This is -- this is ruling that people have lost their
 3 licenses.
 4 CHAIRPERSON BUSCHING: I think the question
 5 that Mr. Lang has and the question I have is, we don't
 6 understand how returning to the Citizens Clean Elections
 7 Fund money that it may have paid out for a participating
 8 candidate is a compensation for the fund. It's real --
 9 merely a reimbursement back, acknowledging that the
 10 pilot can't be compensated. So, it really isn't a
 11 compensation.
 12 Would that be a fair statement, Mr. Lang?
 13 MR. LANG: Yeah.
 14 MR. CORBELL: And I understand what you're
 15 saying fully. I'm just here reporting to you that so
 16 far the FAA and the enforcement actions they've taken --
 17 and they're very strict on pilots -- they do not want
 18 you climbing on board any aircraft flown by a private
 19 pilot who does not meet the medical standards, does not
 20 meet the legal standards to fly the aircraft and
 21 everything else without your knowledge. You think he's
 22 a pilot, he can fly. And I'm going to fly down to
 23 Tucson and all of a sudden there's an accident and he
 24 wasn't a professional pilot.
 25 I understand your concerns. I'm just here to

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1 report to you that a pilot that holds a private license
 2 can have their license suspended if anybody's
 3 compensated. This is just the facts of life.
 4 And the FAA -- an e-mail was sent from the FAA
 5 and I copied the Clean Elections Commission on it where
 6 he says, "We have great concerns on this. Yes, this
 7 could be a violation of private pilots -- I mean with a
 8 private pilot's license and could have it removed."
 9 That's coming from the FAA.
 10 All I can say is we have argued with them and
 11 had pilots that have gone all the way to court and lost
 12 their licenses anyway.
 13 CHAIRPERSON BUSCHING: Thank you. Ms. Jolley.
 14 COMMISSIONER JOLLEY: How is that documented
 15 where you have, let's say, four people on a private
 16 plane and a pilot is volunteering their time, how would
 17 you document that everybody splits the expenses four
 18 ways?
 19 MR. CORBELL: I think the rules you have here
 20 are pretty clear and I have no problem with the
 21 documentation. If you document -- and you can even
 22 require a copy of the pilot's license. Say, if you're
 23 going to fly a flight and flown by a private pilot, show
 24 us a copy of the license, show us the people on board,
 25 the passengers on board, and file that with us and how

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1 much the fuel cost and the rental cost.
 2 You can actually have them have a form and make
 3 them file that. And then you would see it was a private
 4 pilot proven by his license, there were four people on
 5 board and even list their names, and here was the cost
 6 of the fuel and rental of the aircraft. You divide that
 7 by four and that's what regulations say what each person
 8 must pay themselves. When the candidate pays it, they
 9 don't care whether they got the funds from their mother,
 10 from the grandmother, or from Clean Elections
 11 Commission. If the candidate pays his share, that could
 12 be documented as a required expense from their campaign
 13 funds.
 14 COMMISSIONER JOLLEY: But I'm asking, how does
 15 the pilot file that? Does he have to file that with the
 16 FAA report or does he report it in his ledger?
 17 MR. CORBELL: No. No. He just knows that at
 18 any time the FAA can show up and demand to see a pilot's
 19 license or whatever. If they do a ramp check, you land,
 20 FAA can walk out and say let me see your license, let me
 21 see your flight plan and paperwork. You show you have
 22 three people on board -- you don't have to list the
 23 names -- and as a private pilot and anybody says, yeah,
 24 we paid him for this and/or it's documented the fact
 25 that Clean Elections was paid for the flight, they can

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1 take that pilot's license away.
 2 It's kind of like when you go out on the
 3 highway and you have a law and you have a speed limit.
 4 Everybody is supposed to obey the law. How do you know
 5 whether they obey it or not? You don't until you get
 6 pulled over by the policeman and he gives you a ticket.
 7 In this instance they take your license away. Some
 8 people may take chances and get away with it. If you
 9 want it documented, you can turn them in and that makes
 10 it even better to make sure you will have a level
 11 playing field.

12 I don't know if I answered your question.
 13 COMMISSIONER JOLLEY: Well, I was trying to
 14 figure out what form the pilots use that could be
 15 incorporated in the Clean Elections' format because
 16 you're making a statement you can't have any kind of
 17 contribution.

18 MR. CORBELL: In actuality a pilot can go out
 19 and take off in an airplane. He doesn't have to talk to
 20 anybody, he doesn't have to tell anybody about it, he
 21 can just do it. That's the freedom we have in this
 22 country. The thing is, that if he gets caught doing
 23 something illegal, then he's going to suffer the
 24 consequences and that could be a temporary or permanent
 25 suspension of his license. And the license, to get a

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1 pilot's license, is very expensive today.
 2 CHAIRPERSON BUSCHING: Any other questions or
 3 comments for Mr. Corbell?

4 Thank you.
 5 MR. CORBELL: Thank you.
 6 MR. LANG: Thank you.

7 CHAIRPERSON BUSCHING: Anyone else from the
 8 public wishing to speak to this matter?

9 Sir, state your name, please.

10 MR. MAYS: Richard Mays from Fountain Hills. I
 11 was here last month. I'm a private pilot. I'd like to
 12 follow up first with answering a couple of questions
 13 that you had.

14 If you read 61-113 Section D regarding an
 15 airlift, it's pretty clear in that regulation that
 16 compensation -- that they're directing that compensation
 17 may be paid in the situation he was talking about where
 18 any flight where one party pays another party is
 19 considered compensation. If you look at Section D of
 20 this regulation where they're showing if they're an
 21 approved charity, that the airlift -- participants in
 22 the airlift may make a contribution to a third-party.

23 It's pretty clear there that they're saying
 24 that that flight equals compensation and here is the
 25 only situation that is excusable. A campaign does not

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1 fall under Section D(7), paragraph D(7) of this section
 2 and that is basically a tax-free organization.

3 So, how that works is if there was an airlift
 4 scheduled to --

5 MR. LANG: Hurricane Katrina.

6 MR. MAYS: Exactly.

7 -- Hurricane Katrina and you want to
 8 participate in that but you're not a pilot but I am.
 9 I'll can say I'll go into the airport there and I'll
 10 pick people up, you can compensate me by making a
 11 contribution to the Red Cross, okay? That is the only
 12 time they're allowing compensation. So, it's pretty
 13 clear.

14 When you say, I don't see how a reimbursement
 15 or payment to third-parties can be considered
 16 compensation, the FAA does look at that differently.
 17 They say any time money changes hands for the purposes
 18 of flight it is compensation.

19 The second question that you had requested,
 20 ma'am, and refresh my memory because I was thinking over
 21 there and I said I know the answer to this.

22 COMMISSIONER JOLLEY: Incorporating the
 23 paperwork.

24 MR. MAYS: Okay. Every single flight that I
 25 take, when I start the flight, I have a full tank of

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1 gas. When I end the flight, I fill the gas tank. It's
 2 kind of foolish for me not to do that because
 3 condensation can build up in my fuel tanks. It's
 4 actually the recommendation that I gave this Commission
 5 was: What's wrong with receipts? What's wrong with
 6 actual expenses? Your 99.5 cents per nautical mile for
 7 my airplane would be considered compensation.

8 I did the numbers to fly to Yuma last month. I
 9 told you if we took a car from here to Yuma and we
 10 followed paragraph -- the old paragraph B of this
 11 section at 10 cents per mile in my F150, that the
 12 campaign would have to reimburse me \$18.90, okay?

13 I have another thing to throw on that but let's
 14 finish on this step.

15 I also ran the same exact numbers at home from
 16 Phoenix airport to Yuma airport, it's 114.7 nautical
 17 miles. In my airplane I would use 14.1 gallons of fuel.
 18 Cost about \$3.39 for a gallon of fuel now. So it's
 19 about \$48.50. But under this new thing that I -- and
 20 I've been out of this state until this morning, and so I
 21 just read this -- but under this scheme that you have, I
 22 would have to take a 115 nautical miles times 99.5
 23 cents, which comes out a little over a hundred dollars.
 24 But my actual expense is only \$48.

25 And what I want to ask this Commission is where

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1 else, in what other scheme does this Commission require
 2 that a person who is participating in a campaign receive
 3 more dollars than their actual expense? If I am a
 4 landlord and I rent property and I rent that property
 5 for an actual expense, you don't dictate that I must
 6 take more than that. But here is the only place I could
 7 find -- if I'm an accountant. This gentleman said that
 8 they can do it for free. They can volunteer their
 9 services. I'm a pilot. What is the difference?

10 There is a way for them to be a comparison, for
 11 there to be a compensation regime that fits the federal
 12 regulations that applies to every single aircraft and
 13 that is actual expenses. If I fly as a private pilot
 14 from Point A to Point B and it costs me \$48 to go to
 15 Yuma, as the pilot one-fourth of that -- if there's four
 16 people in my plane -- I must pay.

17 So, that's --

18 COMMISSIONER SCARAMAZZO: You don't take into
 19 account the appreciation on your plane then? Just
 20 actual expenses as far as fuel goes?

21 MR. MAYS: Well, sir, the regulation does not
 22 allow me to take appreciation. The federal regulation
 23 says that I may recover the actual rental value. But if
 24 I own my airplane, there is no actual rental value. And
 25 there's -- I hope that answers that.

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1 took the job in the first place and I said, hey, I'll do
 2 this job for you and I'll transport myself.

3 Yet this Commission is now saying they're going
 4 to -- they're going to -- I'm not saying the Commission
 5 is, but these recommendations state, well, now you have
 6 to compensate that person at the same rate that the
 7 state airplane charges. The state airplane is a pretty
 8 expensive airplane to fly. Has nothing to do with a
 9 four-seater single-engine aircraft. 99-and-a-half cents
 10 per mile is about what a king or queen aircraft takes to
 11 fly. It has nothing to do with the quote.

12 So, what I want to know is, why would this
 13 Commission pass a rule that says a campaign has to pay
 14 more than the actual value of it? If I fly my airplane
 15 and you want to say that if a candidate were to ask me
 16 to fly them or I were to fly as a volunteer, and you
 17 would say instead of these rules that says the pilot
 18 must pay their own share, if you -- it does not in here
 19 say though that the candidate must pay the price.

20 I think you can say that the candidate must pay
 21 their own share of the transportation. And the way you
 22 document that is pretty simple. Pilot should always
 23 have an itinerary of some kind and you kind of
 24 documented in this how you want that filled out. Actual
 25 receipts. At the end of the flight we have a receipt

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1 There is a point that you just brought up with
 2 that I wanted to address though.

3 COMMISSIONER SCARAMAZZO: Okay.

4 MR. MAYS: And I'm really focused on the
 5 private pilot flying for someone else. I want to
 6 address three others. Let's say that I as a private
 7 pilot -- and this is kind of a question really maybe to
 8 staff -- if I as a private pilot want to participate in
 9 a campaign and I say I'll go by myself up to Flagstaff,
 10 am I required to be compensated at 99.5 cents if I use
 11 my airplane?

12 According to the way I read this, if it's
 13 campaign activity I have to be. And that's just wrong.
 14 That's my personal choice of transportation that you're
 15 limiting. I should -- if I'm -- no one else is in the
 16 airplane with me.

17 This policy doesn't take that into
 18 consideration. I have a right to chose the
 19 transportation I want to take. I'm not being directed
 20 by a campaign, I'm participating.

21 Second thing is, what if I work for a campaign?
 22 What if I'm an employee of a campaign -- which I'm
 23 not -- but I want to use my private airplane for
 24 transportation around the state to do my job? The
 25 compensation for that would have been considered when I

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1 that says how much I paid for the gas, the oil, and the
 2 trip cost me. I take out my portion of it as the pilot.

3 If you do it this way and you want to be
 4 fair -- I mean, I could under 99-and-a-half cents per
 5 mile, I guess I would fly a jet that would probably cost
 6 me \$40 or \$50 per mile to fly, yet I only have to
 7 compensate. Someone is going to inure a benefit in that
 8 way and yet I'm going to end up contributing to campaign
 9 funds.

10 CHAIRPERSON BUSCHING: Thank you, sir.

11 MR. MAYS: Couple more things, if I may. I
 12 know I'm taking a lot of time.

13 CHAIRPERSON BUSCHING: Be brief.

14 MR. MAYS: This is a pretty long -- okay. On
 15 one of these you have the actual rental value of the
 16 airplane and you have it under the candidate flies his
 17 own aircraft that he must be compensated for the actual
 18 value of the airplane. Something that you're not taking
 19 into consideration is what if that pilot is flying an
 20 experimental aircraft, there is no rental value. You
 21 cannot rent an experimental aircraft. And a huge
 22 portion of the aircraft that are there are experimental.
 23 Deer Valley, 40, 50 percent of the aircraft that is
 24 parked there are experimental. There is no rental value
 25 because no one can rent them.

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1 There's one other -- I wanted to give you one
2 last example. Under the B -- or what is now H, 10 cents
3 per mile for any other vehicle. I kind have a problem
4 with discriminating one vehicle against another. But
5 let me give you a scenario that shows how out of whack
6 this whole thing is and why we don't just do actual
7 expenses.

8 You say here that, "A candidate, candidate's
9 agent, or person traveling on behalf of the candidate
10 uses a motor vehicle which is owned or leased by the
11 candidate, person, or organization effectively at the
12 normal and usual rental charge of the transportation."
13 Then you state what the normal and usual rental charge
14 is, "At least 10 cents per mile."

15 I want to ask this Commission, what if I have
16 an RV that could take 40 or 50 people and I could
17 transport those 40 or 50 people throughout the state,
18 wouldn't they inure a whole lot bigger benefit? What if
19 I took my RV and loaded it with campaign volunteers and
20 went from Phoenix to Yuma? The campaign has to be
21 reimbursed 10 cents per mile, so \$18.90.

22 If I fly my little four-seater airplane you
23 want a \$115. I think that taking that RV would inure a
24 much greater benefit to campaign by loading up the
25 campaign in there.

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1 CHAIRPERSON BUSCHING: Thank you, Mr. Mays.
2 Any questions by members of the
3 Commission of Mr. Mays?

4 Okay. Any other members of the public that
5 wish to speak to this matter? Ma'am.

6 MS. DEMARCHI: I do, Madame Chair. Good
7 morning, Madame Chair, Commissioners. My name is Kim
8 Demarchi. I'm responsible for the other piece of paper
9 on your table. I am an attorney in private practice at
10 Lewis & Roca. And I'm here on my own behalf and on
11 behalf of my sometimes colleague Andy Gordon. Neither
12 of us are representing any candidates, we're just --

13 MR. LANG: May I interrupt you?

14 MS. DEMARCHI: Please.

15 MR. LANG: I just want to make sure the
16 Commissioners have the version that was drafted based on
17 her comments.

18 MS. DEMARCHI: I have the little purple line
19 right in the middle. That's the one that is mine.

20 Neither of us wanted to speak to you today
21 because of any particular candidates or clients that
22 we're working with. We simply both practice in this
23 area and we routinely represent both political
24 committees and candidates seeking all levels of office
25 in Arizona.

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1 We had some concern about how it would work out
2 on the ground level -- no pun intended, I know we are
3 talking about planes. And really the concerns come down
4 to this, the purpose of election law in general and
5 Clean Elections in particular is to try to ensure some
6 kind of parity between campaigns, so that campaigns are
7 paying the same amount for services. That's the point
8 of having matching funds. That's the point of having
9 campaign limits. You want everybody to be working on
10 the same field. And the other point of Clean Elections
11 is to try to get our candidates out there to meet their
12 constituents, to give the people the opportunity for the
13 people to know who are their choices.

14 My concern is not with the airplane
15 reimbursement issue. I know nothing of the Federal
16 Aviation Administration. If I were in your staff's
17 position, I would love the FAA's guidance, because it
18 strikes me as an interesting question which could be
19 resolved in one or two ways.

20 My concern is with the rule that is proposed
21 regarding trips combined with campaigned-related and
22 non-campaign-related travel. The proposal you have from
23 staff is the federal rule, that if there's a trip by a
24 candidate that combines both campaign and
25 non-campaign-related expenses, that the campaign has to

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1 pay to go to all the places where the campaign is there
2 to work. That's part of the reason you actually need
3 the 99.5 cent reimbursement.

4 Because what happens -- and this happens on the
5 federal level all the time -- when a candidate goes five
6 or six places and only three of them are campaign
7 related, the campaign pays for a hypothetical trip which
8 doesn't generate actual expenses. So you need some kind
9 of reimbursement and the 99-and-a-half cent rate works
10 well for that.

11 What the federal rule requires is to treat that
12 trip as though it was entirely for campaign-related
13 purposes, and that works on the federal level because
14 federal candidates have a lot of money. Clean
15 Elections' candidates have a lot less money and
16 statewide candidates particularly have a lot more ground
17 to cover.

18 And the concern Andy and I have had as we
19 looked at the rule and talked about for some candidates,
20 in particular statewide down-ballot candidates who get
21 less money, is that those folks may have other reasons
22 to visit other parts of the state. And if you permitted
23 a proportionate rule where, say, they spent 60 percent
24 of their time at the places they went on campaign
25 activities, or they pay 60 percent of the cost or trip

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1 and whatever other reason they were there for the other
2 40 percent, that entity would pick up the 40 percent
3 cost of the trip. That would enable candidates to spend
4 more traveling around the state meeting with
5 constituents and make statewide travel much more
6 feasible.

7 Now, the version that's in front of you has a
8 safeguard that came up in my conversations with staff.
9 Obviously, there's a concern that if you said to a
10 candidate you only have to pay a proportional cost, that
11 the sneaky candidate will come up with a whole bunch of
12 reasons that we need to use it but where only 10 percent
13 of the time, let's say, are on campaign events but those
14 are really important campaign events.

15 If you have that concern, you can use this
16 language that's here in the draft and you can set,
17 essentially, a floor. You can say you pay actual
18 percentage, but in any event you have to pay at least
19 half, or you have to pay at least 40 percent, or 30
20 percent, or whatever you decide the appropriate floor
21 is.

22 So that's why I'm here. I'm not going to be
23 complicated about the FAA, that's the only reason I'm
24 here today.

25 I can't fly anything, gentleman.

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1 CHAIRPERSON BUSCHING: Any members of the
2 Commission have any questions for Ms. -- Demarchi?

3 MS. DEMARCHI: Demarchi.

4 CHAIRPERSON BUSCHING: Thank you.

5 MS. DEMARCHI: Thank you.

6 CHAIRPERSON BUSCHING: Any other members of the
7 public wish to speak to this matter?

8 If not, I'll turn back to Mr. Lang and ask you,
9 based upon what you've heard, what is your
10 recommendation?

11 MR. LANG: I've become an expert on FAA
12 regulations in the last 10 minutes, but thank you,
13 Madame Chair.

14 Based on what I've heard today, my strong
15 recommendation is for Version A, the first version, the
16 combined version. While it will not satisfy Mr. Mays'
17 concern regarding the personal use of his own plane, but
18 it does give -- the combined version gives the two
19 options, you can either use the mileage rate which he
20 illustrated some concern about, or you can use the
21 rental rate. So if you can find a cheaper rental rate,
22 you know, a legitimate rental rate out there on the
23 market that works out to be less than 99 cents a mile --
24 or \$99 a mile, you can use that.

25 So, I would suggest that's the best version

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1 because of the concerns raised by Mr. Mays. Although,
2 I'm the first to say it will not assuage him.

3 As to Mr. Corbell's concerns, Mr. Mays did
4 raise a good point I felt about the regulations
5 regarding the airlift. And so I would be happy for
6 counsel to step in, but I think that we should -- the
7 Commission should consider incorporating Mr. Corbell's
8 proposed G, but I do not think we need the little
9 exception at the top. Here it is. I don't think we
10 need the little exception, "Except G below" in the very
11 beginning of 13, because I think G itself serves as that
12 exception and I still think they need to report it
13 properly.

14 I thought that I would consider in B where it
15 says: The payment shall be remitted to Clean Elections'
16 fund, you know, if they can't pay. I thought what we
17 could do is insert language that says: Unless the FAA
18 precludes it. And let the FAA tell us this is
19 inappropriate. But given Mr. Mays' illustration
20 regarding this, I think perhaps we should just go with
21 G, because I think that addresses the concerns raised by
22 Mr. Corbell. I think it's intended to do that and not
23 change anything else.

24 CHAIRPERSON BUSCHING: Okay.

25 MR. LANG: So, that's my recommendation.

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1 Also, regarding Ms. Demarchi's comment,
2 that's up to Commission, but I did draft that document
3 based on the comments she gave me. And I think that
4 with the proviso that 50 percent cap on campaign
5 purposes, I think that serves as a safety net to ensure
6 there's no shenanigans. And I think based on that, we
7 should -- the Commission should consider addressing her
8 concerns in this format.

9 This format is sort of odd. For anyone who
10 didn't see, if you look at the right column where all
11 these boxes are, go down near the fourth from the
12 bottom, there's a purple box. That language was deleted
13 from the other versions because that requires that if
14 there's any campaign purpose at all for either portion
15 of that campaign. So that's been deleted to address Ms.
16 Demarchi's concern and the new language was put in to
17 address our own concern about game playing.

18 So, I think that's a fair compromise.

19 CHAIRPERSON BUSCHING: So you agree there
20 should be a floor?

21 MR. LANG: Yes, I agree with whatever the
22 Commission deems appropriate, but I think there should
23 be some floor.

24 CHAIRPERSON BUSCHING: All right.

25 MS. VARELA: Commissioner?

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1 CHAIRPERSON BUSCHING: Any other questions or
2 comments?

3 Ms. Varela.

4 MS. VARELA: Yes. Chair Busching, thank you.
5 I would just like to, with all due respect to Todd, I
6 know that he and staff have spent a lot more time on
7 this than I have. Given all the comments and all the
8 concerns that have been raised and now Mr. Corbell
9 introducing the FAA regulations into it, I really would
10 like time for our office to take a look at all of these
11 issues before any decision is made on this.

12 So, my recommendation would be that the
13 Commission table this and make a decision at a later
14 date just so we can take a closer look. And it may be
15 we end up with Todd's recommendation anyway, but this is
16 the first time I've seen this federal regulation. I
17 don't know anything about the FAA. I would like time
18 for our office to do some research and make sure that
19 whatever changes are made, they're done right the first
20 time and not revisiting this. So, that's my
21 recommendation if that's okay with Todd.

22 MR. LANG: Madame Chair, I'm interested because
23 time is wasting, but if I was in Diana's position, and I
24 was once, I would make the same recommendation she has
25 made.

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1 CHAIRPERSON BUSCHING: Let me ask either of
2 you, if we were to approve something along the lines of
3 Mr. Lane's recommendation today, this would still be
4 subject to further review by the Justice Department
5 pre-clearance and things; would it not?

6 MS. VARELA: Well, yeah, it would. Yeah.

7 CHAIRPERSON BUSCHING: And so --

8 MS. VARELA: It would have to be submitted to
9 the Department of Justice for pre-clearance.

10 CHAIRPERSON BUSCHING: So, would it make sense
11 to go ahead and approve something and if you find that
12 in the interim there are problems, then we just stop
13 that process and bring it back onto the agenda as
14 opposed to assuming that there's going to be problems
15 with it and then just tabling because of his concerns
16 about time?

17 MS. VARELA: No, I understand that. I cannot
18 provide legal advice to you on what he just said right
19 now. So I would feel very uncomfortable saying, go
20 ahead and do that. For example, one of the suggestions
21 is just to call the -- let me see where it is -- call it
22 -- it's not an in-kind contribution. I think that's
23 contrary to the statute.

24 So, I would prefer that it just be tabled and I
25 can work with Todd to look at this question quickly.

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1 But, I guess I would feel uncomfortable saying, yeah, go
2 ahead and do it, because I can't provide legal advice to
3 you today on his recommendation.

4 CHAIRPERSON BUSCHING: Okay. Other questions
5 or comments by members of the Commission? Okay.

6 COMMISSIONER SCARAMAZZO: I would move to table
7 this issue.

8 CHAIRPERSON BUSCHING: Is there a second?

9 COMMISSIONER DETRICK: Second.

10 CHAIRPERSON BUSCHING: It's been moved by
11 Commissioner Scaramazzo and seconded by Commissioner
12 Detrick that we table Agenda Item VI.

13 Any further discussion?

14 If not, the Chair will call for the question:

15 All in favor say "aye."

16 (Chorus of ayes.)

17 CHAIRPERSON BUSCHING: Nay?

18 Chair votes aye. Motion carries. Thank
19 you for coming.

20 Item No. VII, consideration and approval of
21 2006 debate sponsor applicants.

22 Mr. Lang.

23 MR. LANG: Madame Chair, this is normally the
24 province of Michael Becker who has been working
25 diligently on this issue. For the reasons already

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1 discussed, he's not here so Genevra Richardson is ready
2 to go over it and give you an update on what is going on
3 there.

4 MS. RICHARDSON: Good morning, Commissioners.
5 Mike Becker asked me to present this for him as I sit on
6 a debate sponsor committee with him along with Christina
7 Murphy and Paula Ortiz of our office.

8 We met on January 9th to go over all the debate
9 sponsors' applications and we received a lot of support
10 and applicants in various areas. It seemed like a lot
11 of people were interested in multiple districts. So
12 based on prior experiences, the actual application and
13 the cost that they have presented we had come up with
14 these recommended debate sponsors.

15 We did receive -- we didn't receive
16 applications for all the districts so we have staff
17 working on recruiting sponsors for the areas that we are
18 lacking right now. But at this point we have
19 suggestions for you to approve today.

20 And if you have any questions, I would be happy
21 to answer them if I know the answer.

22 CHAIRPERSON BUSCHING: Commissioner Jolley.

23 COMMISSIONER JOLLEY: Yes, I have a question,
24 Genevra. How many sponsors are you lacking in the
25 legislative districts?

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1 MS. RICHARDSON: They're at the bottom of the
2 page.
3 COMMISSIONER JOLLEY: Here we are. Okay.
4 MS. RICHARDSON: Looks like 11 districts right
5 now. Several of those are unopposed, so we don't know
6 if we will need sponsors for those districts. And we
7 are actually going back to the sponsors who had those in
8 '04 and see if they're interested. And also we've
9 received some other applicants that are interested too.
10 COMMISSIONER JOLLEY: Another question. So you
11 might have sponsors that have submitted their
12 application, and if there are unopposed legislative
13 districts, there won't be any debates?
14 MS. RICHARDSON: Correct. And the other thing
15 too I would like to point out, we do have debate
16 sponsors for all the districts but they may not have to
17 sponsor a debate depending on the race in that district,
18 or might have to do just a primary debate and not a
19 general. We don't know that until we receive more
20 candidate applications.
21 CHAIRPERSON BUSCHING: What's the earliest date
22 the debate might occur?
23 MS. RICHARDSON: During the primary. I think
24 that that might have to be after August. I'm not sure,
25 I would have to go back to '04.

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1 CHAIRPERSON BUSCHING: But sometime during the
2 summer?
3 MS. RICHARDSON: Probably June. June?
4 MS. ORTIZ: July.
5 MS. RICHARDSON: July.
6 CHAIRPERSON BUSCHING: All right. Any members
7 of the public wish to speak to this matter?
8 Ms. Lubin.
9 MS. LUBIN: Hi. Barbara Lubin with Clean
10 Elections Institute. I think it's really nice that the
11 Bullhead City Chamber of Commerce once again wants to
12 host the treasurer debates. Who knows if it will even
13 be contested, but I do recall that in the last election
14 one of the candidates, I guess it was in the primary,
15 she was uncontested and asked to be excused because of
16 the distance and whatnot.
17 And, I don't know, I -- I -- you are going to
18 be making these debates available as I recall on your
19 website now, because I don't think there's going to be a
20 whole lot of people in Bullhead City that sees this
21 debate that affects the statewide office. I think we
22 need to have everyone go on the Internet.
23 But, anyway, there has been problems in the
24 past with this debate in the 2002 election just because
25 of the distance involved for candidates in traveling

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1 there. So I just wanted to mention that.
2 CHAIRPERSON BUSCHING: Thank you. Any other
3 members of the public wish to speak to this matter?
4 Ms. Ortiz.
5 MS. ORTIZ: Madame Chair, with Bullhead City,
6 that area received a lot of coverage through radio and
7 the whole region of those voters in the area. It's a
8 statewide office, so if the sponsor is in a city in
9 Arizona we try to recognize that. We received a lot of
10 compliments on it being in a different area than Phoenix
11 because it's a statewide office.
12 CHAIRPERSON BUSCHING: Commissioner Jolley.
13 COMMISSIONER JOLLEY: Coming from a rural
14 county, I appreciate when we have the statewide office
15 debates in our areas. So, I'm all for coming out to
16 rural areas.
17 CHAIRPERSON BUSCHING: Okay. Thank you. Any
18 other questions or comments?
19 If not, the Chair will entertain a motion.
20 Commissioner Jolley.
21 COMMISSIONER JOLLEY: Yes. I move that we
22 approve the 2006 debate sponsor applications or
23 applicants as stated by staff.
24 CHAIRPERSON BUSCHING: Is there a second?
25 COMMISSIONER SCARAMAZZO: Second.

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1 CHAIRPERSON BUSCHING: It's been moved by
2 Commissioner Jolley and seconded by Commissioner
3 Scaramazzo that we approve the 2006 debate sponsor
4 applicants as listed by staff as of January 26th.
5 Any further discussion?
6 If not, the Chair will call for the question:
7 All in favor, say "aye."
8 (Chorus of ayes.)
9 CHAIRPERSON BUSCHING: Opposed, nay?
10 Chair votes aye. Motion carries.
11 Item No. VIII, discussion and possible action
12 on GRRC, G-R-R-C, five-year review recommendations.
13 Ms. Richardson? Mr. Lang?
14 MR. LANG: Thank you, Madame Chair. Ms.
15 Richardson and our consultant Dean Wright have been
16 working closely with GRRC on the five-year review and
17 we're still working on some issues with them.
18 But you have here a chart prepared by Genevra
19 which goes through GRRC's recommendation regarding
20 changes due to things ranging from inconsistency to lack
21 of clarity, that sort of thing. And what she has done
22 is laid those out for you. The first page is a summary
23 but then after that the changes are laid out for you and
24 then some of the proposed corrections.
25 What we would like back from the Commission is

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1 an indication that we should proceed with rulemaking to
 2 implement these changes, because, in fact, we found all
 3 the changes to be fine. We have no objections to any of
 4 the changes. They're largely technical but not entirely
 5 technical. A lot of good clarity suggestions, a lot of
 6 helpful stuff. So we would like to go ahead and begin
 7 work on these changes.

8 CHAIRPERSON BUSCHING: Okay. Thank you. Any
 9 questions -- any members of the public wish to speak to
 10 this matter?

11 Any questions or comments by members of the
 12 Commission?

13 Mr. Lang, would it be appropriate to delay all
 14 of these changes until after the election cycle is over
 15 in the interest of not confusing the situation during
 16 the election cycle, since this is starting a brand-new
 17 rulemaking process?

18 MR. LANG: We could do that. As I told you,
 19 many of these changes are non-substantive but I think
 20 some of them are. And so, perhaps for clarity and
 21 consistency, it might be wise to indicate to GRRC that
 22 we are undertaking these proposed changes with the
 23 intent of having them implemented after the election
 24 cycle.

25 CHAIRPERSON BUSCHING: And if we were to do

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1 division or the agency proposes to submit rulemaking by
 2 December of '07. So, you set the date that you want to
 3 make the changes.

4 CHAIRPERSON BUSCHING: Okay. All right.

5 MS. QUIROZ: That's all I have to offer right
 6 now.

7 CHAIRPERSON BUSCHING: Okay. Thank you.
 8 Anyone else have any questions or comments?

9 Ms. Ortiz.

10 MS. ORTIZ: No, I just wanted to kind of
 11 introduce Janette Quiroz and Troy Walters. They're with
 12 ADOT and their director has authorized their service to
 13 assist the Commission in any completion aspect of our
 14 review report. So, they're here to close out anything
 15 that we need any work from them on.

16 CHAIRPERSON BUSCHING: Thank you very much.
 17 Welcome.

18 Any other questions or comments?

19 If not, the Chair will entertain a
 20 motion.

21 COMMISSIONER JOLLEY: Help me word this. On
 22 the GRRC five-year review, the changes to the rules will
 23 be reviewed by the Commission again, or implemented, or
 24 approval at the end of 2006?

25 CHAIRPERSON BUSCHING: I think -- do you want

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1 that, would we approve them now or just table the matter
 2 until after the election cycle?

3 MS. RICHARDSON: Can I just point out, we have
 4 to submit a final report to GRRC. They want us to
 5 include changes into the final report. They came back
 6 with the comments that they have to do that by
 7 mid-February and they will approve the report in the
 8 March meeting. We didn't feel comfortable putting that
 9 we're going to do this until the Commission looked at
 10 this and said that's okay. I think to say we're looking
 11 at it and I think it would be okay with GRRC to say
 12 we're looking at things, we see the inconsistencies, and
 13 we won't do that until after the election.

14 CHAIRPERSON BUSCHING: Okay. Thank you. I see
 15 there's a member of the public that wishes to speak.

16 MS. QUIROZ: If I could offer.

17 CHAIRPERSON BUSCHING: If you could come up and
 18 state your name, please. Appreciate it.

19 MS. QUIROZ: My name is Janette Quiroz. I'm an
 20 administrative rule writer with the Motor Vehicle
 21 Division. One of the 10 items in the five-year hold
 22 review is anticipated action of what you pointed out in
 23 the five-year review and you can set that for any date
 24 you choose. So if you wanted to postpone changes that
 25 you promised in the five year, you just state the

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1 to review it again or do you want to approve them and
 2 have the rulemaking process actually begin after the
 3 election?

4 COMMISSIONER JOLLEY: What should we do?

5 CHAIRPERSON BUSCHING: I think we want to
 6 approve the GRRC report and we want to proceed with the
 7 rulemaking -- that rule -- or rulemaking that's
 8 described here, but we want to defer the action on that
 9 until after the election. Unless Mr. Lang and Ms.
 10 Varela have input on that.

11 Mr. Lang.

12 MR. LANG: Madame Chair, my suggestion would be
 13 that if the Commission is so inclined they approve the
 14 suggested changes and instruct staff to proceed on
 15 rulemaking with the understanding these rules will be
 16 considered and passed by the Commission, but the
 17 effective date will be for January 1, 2007 or whatever
 18 the Commission deems appropriate.

19 In other words, allow us to begin work on them
 20 now with the understanding the effective date won't be
 21 until after the election. That gives us more time to
 22 get them pre-cleared and everything else.

23 CHAIRPERSON BUSCHING: And I see Ms. Richardson
 24 shaking her head as well for the benefit of Mr.
 25 Scaramazzo.

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1 Okay. With that, anyone want to venture into
 2 making a motion?
 3 COMMISSIONER DETRICK: Madame Chair, let me
 4 give it a whirl.
 5 I move that we approve the recommendations
 6 proposed by GRRC and that we direct staff to proceed
 7 with the -- with -- with the rulemaking effort, but that
 8 the rules will not go into effect until January 1 of
 9 2007.
 10 Is that any closer?
 11 CHAIRPERSON BUSCHING: Okay. Is there a
 12 second?
 13 COMMISSIONER JOLLEY: I'll second it.
 14 CHAIRPERSON BUSCHING: Okay. Thank you. It's
 15 been moved by Commissioner Detrick and seconded by
 16 Commissioner Jolley that we approve the recommended
 17 proposals by GRRC and we direct staff to proceed with
 18 the rulemaking authority but we postpone implementation
 19 of the rules until 2007.
 20 COMMISSIONER DETRICK: Exactly what I said.
 21 CHAIRPERSON BUSCHING: Oh good.
 22 Any further discussion?
 23 If not, the Chair will call for the question:
 24 All in favor say, "aye."
 25 (Chorus of ayes.)

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1 CHAIRPERSON BUSCHING: Opposed, nay?
 2 Mr. Scaramazzo, did you vote? Are you
 3 there?
 4 COMMISSIONER SCARAMAZZO: Yes. Can you hear
 5 me?
 6 CHAIRPERSON BUSCHING: Okay. Now we can.
 7 COMMISSIONER SCARAMAZZO: Okay. That was an
 8 aye.
 9 CHAIRPERSON BUSCHING: Okay. Great. The Chair
 10 votes aye. The motion carries.
 11 The next item is Item IX, discussion and
 12 possible action on 2006 Participating Candidate Guide.
 13 Is that you, Mr. Lang?
 14 MR. LANG: Well, no, it's Genevra Richardson.
 15 Staff and she and Michael Becker have been keeping a
 16 running tally on proposed changes, and as you can see,
 17 some of them are quite technical and she would like to
 18 go over those with you.
 19 MS. RICHARDSON: Good morning, Commissioners.
 20 We, Mike and I, have been reviewing the Participating
 21 Candidate Guide and we like to update it every so often
 22 when we feel there's something that's changed in our
 23 rule or policy. And also some technical changes that we
 24 found. It's a rather large book and when we're in class
 25 we have things pointed out to us that might look

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1 inconsistent.
 2 We wanted the Commission to approve it. We
 3 would like to print up a new version for the training
 4 shops. We wanted the Commission to approve them before
 5 we went ahead and printed them up for distribution.
 6 Basically, we changed the definition of
 7 qualified elector to match up with the statute on page
 8 36 and page 34 and 40. We get the question about
 9 one-party dominate districts. It originally said
 10 January 1st. The Commission usually approves those at
 11 the end of May and you've done that in the last two
 12 election cycles.
 13 And we removed the airplane paragraph since
 14 we're working on that currently. And then all of the
 15 others just seem to be technical changes.
 16 So, if you have any questions, I'd be happy to
 17 answer them or if you have any other suggested changes
 18 that you've seen in the course of having the handbook
 19 with you.
 20 CHAIRPERSON BUSCHING: Any questions or
 21 comments for Ms. Richardson?
 22 COMMISSIONER DETRICK: Madame Chair.
 23 CHAIRPERSON BUSCHING: Commissioner Detrick.
 24 COMMISSIONER DETRICK: I would like to
 25 compliment staff on keeping this handbook up to date.

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1 This is an incredible effort and I think it's very well
 2 done. And the fact that you are so open to suggestions
 3 and modifications is really very, very great.
 4 CHAIRPERSON BUSCHING: Any other questions or
 5 comments for Ms. Richardson?
 6 Commissioner Jolley.
 7 COMMISSIONER JOLLEY: Yes. I reviewed these
 8 with Michael Becker and I feel comfortable with the
 9 changes. I went through this with him.
 10 CHAIRPERSON BUSCHING: Okay. Good. I did have
 11 a question on page 43, the process of providing matching
 12 funds. And that is this talks about, down at the
 13 bottom, the Commission staff calculates the amount of
 14 matching funds that are due and notifies the candidates
 15 when funds are available. I think that based upon the
 16 last election cycle that may be a little out of date at
 17 this point.
 18 Aren't we -- isn't the matching funds issue
 19 having been now taken up and reserved to the Commission
 20 and the Commission decides the amount of the matching
 21 fund?
 22 MS. VARELA: No. What that issue was was when
 23 you have something where we couldn't just -- we didn't
 24 want staff deciding if there was a close call whether
 25 something was an independent expenditure. And in those

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1 instances, campaign finance reports were not filed
 2 because the party -- the organizations who issued those
 3 advertisements or whatever didn't think they were
 4 subject to matching funds.
 5 My understanding of this is when the person
 6 does whatever they do, actually files a campaign finance
 7 report and reports that amount of money that's been
 8 spent. That covers that situation.
 9 CHAIRPERSON BUSCHING: Okay. All right. The
 10 other situation is, I didn't notice, is it addressed in
 11 this guide at all or is that --
 12 MS. RICHARDSON: I don't think it is. I think
 13 the only time we bring up matching funds is with the
 14 non-participating candidates in the guide. So, that's a
 15 good point. We don't address the independent
 16 expenditures.
 17 MR. LANG: We could obviously add a "point
 18 four" there.
 19 MS. RICHARDSON: Yeah.
 20 CHAIRPERSON BUSCHING: Okay. And the version
 21 that I saw still had Commissioner Bardorf in it. Maybe
 22 we want to substitute commissioners now.
 23 MS. RICHARDSON: Okay.
 24 CHAIRPERSON BUSCHING: Any members of the
 25 public that wish to speak to this matter?

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1 Any other discussions or comments?
 2 If not, the Chair will entertain a motion.
 3 Commissioner Jolley.
 4 COMMISSIONER JOLLEY: Yes. I will move that we
 5 approve the Participating Candidate Handbook as
 6 presented by staff this morning.
 7 COMMISSIONER DETRICK: Madame Chair, I'll
 8 second it if you'll also include that we and that staff
 9 be directed to incorporate the issue that the Chair
 10 raised regarding the independent expenditures.
 11 CHAIRPERSON BUSCHING: Okay. Mr. Lang?
 12 MR. LANG: I suggest that we in the motion
 13 specifically exempt any reference to page 48 since we
 14 did not implement the new policy.
 15 CHAIRPERSON BUSCHING: Okay. Is that agreeable
 16 to you Commissioner Jolley?
 17 COMMISSIONER JOLLEY: Yes, it is.
 18 CHAIRPERSON BUSCHING: And to you Commissioner
 19 Detrick?
 20 COMMISSIONER DETRICK: Yes.
 21 CHAIRPERSON BUSCHING: It's been moved and
 22 seconded that we approve the 2006 Participating
 23 Candidate Guide with the revisions recommended by staff
 24 and the changes noted here with respect to matching
 25 funds, and substitution of commissioners, and to exclude

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1 from approval the privately owned airplane or all of
 2 page 49 -- or 48 -- or --
 3 MR. LANG: The proposed changes to it.
 4 CHAIRPERSON BUSCHING: Exclude the proposed
 5 changes to the privately owned airplane section.
 6 Any further discussion?
 7 If not, the Chair will call for the question:
 8 All in favor say "aye."
 9 (Chorus of ayes.)
 10 CHAIRPERSON BUSCHING: Opposed, nay?
 11 Chair votes aye. Motion carries.
 12 Item X, consideration and possible approval of
 13 No Action Letter regarding office holder expense
 14 accounts.
 15 Mr. Lang.
 16 MR. LANG: Thank you, Madame Chair,
 17 Commissioners. At Item X which is buried behind the
 18 book that we just went over is a letter from
 19 Representative Lopez and Senator Aguirre regarding
 20 office holder expense accounts.
 21 It's actually not technically a No Action
 22 Letter, it shouldn't be treated as such. But it
 23 functions in much the same way in that they are asking
 24 that if for some reason the Commission rescinded or
 25 otherwise rescinded the office holder expense account

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1 rule, or otherwise invalidated by a court or what have
 2 you, would the Commission take adverse action because of
 3 course many folks would then be in non-compliance with
 4 our rules and would that invalidate their eligibility to
 5 be a Clean Elections' candidate?
 6 I have drafted a letter advising them of my
 7 recommendation which, obviously, I'm asking you to
 8 approve that, that, no, the Commission would not take
 9 adverse action so long as someone complied in good faith
 10 with the rule. I did imply though that once the rule
 11 has been rescinded, further behavior with the office
 12 holder expense account would be subject to possible
 13 action. And I held in there that it would not affect,
 14 so long as again if they didn't do anything after the
 15 rule to invalidate or rescind, it would not affect their
 16 eligibility to be Clean Elections' candidates.
 17 CHAIRPERSON BUSCHING: Okay. Any questions for
 18 Mr. Lang?
 19 Any members of the public wish to speak to this
 20 matter?
 21 Mr. Lang.
 22 MR. LANG: I point out to the Commission that
 23 both of these office holders happen to be Democrats, but
 24 of course this would apply to all office holders
 25 regardless of party.

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1 CHAIRPERSON BUSCHING: Okay. Any other members
 2 of the public wish to speak to this matter?
 3 Any discussion by members of the
 4 Commission?
 5 If not, the Chair will entertain a motion.
 6 COMMISSIONER DETRICK: Madame Chair.
 7 CHAIRPERSON BUSCHING: Commissioner Detrick.
 8 COMMISSIONER DETRICK: I move that we approve
 9 the letter drafted by Mr. Lang as presented.
 10 CHAIRPERSON BUSCHING: Is there a second?
 11 COMMISSIONER JOLLEY: I'll second that.
 12 CHAIRPERSON BUSCHING: It's been moved by
 13 Commissioner Detrick and seconded by Commissioner Jolley
 14 that we approve the letter prepared by Mr. Lang as
 15 drafted.
 16 Any further discussion?
 17 I just want to say that it seems to me like
 18 this is the right thing to do and it's good to announce
 19 our policy on this so that people can feel comfortable
 20 with taking action as our rules currently exist. And so
 21 I'm certainly in favor of it.
 22 Any further discussion?
 23 If not, the Chair will call for the question:
 24 All in favor say "aye."
 25 (Chorus of ayes.)

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1 CHAIRPERSON BUSCHING: Opposed, nay?
 2 Chair votes aye. Motion carries.
 3 Okay. Item XI, nomination and election of
 4 Chair or acting Chair for 2006. This matter is
 5 obviously on the agenda because the person that the
 6 Commission had approved the Elected Chair recently
 7 resigned, and so I'm acting as Chair today as a result
 8 of having been Chair last year. So, it's time to elect
 9 a new Chair or acting Chair for the foreseeable future.
 10 COMMISSIONER SCARAMAZZO: Madame Chair.
 11 CHAIRPERSON BUSCHING: Commissioner Scaramazzo.
 12 COMMISSIONER SCARAMAZZO: Just making sure.
 13 I would like to present a motion for
 14 consideration by the Commission, and as we are in the
 15 flux and transition period right now with basically two
 16 new commission members coming on, I think in fairness to
 17 the new commission members to become acquainted with
 18 everyone and go ahead and get their feet wet, I think
 19 it's important for us to kind of hold steady on where
 20 we're at right now.
 21 And, with that in mind, I would like to move
 22 you as Chair, Marcia, be appointed for the next three
 23 months to continue as Chair and that the issue be taken
 24 up for permanent 2006 Chair after that three-month time
 25 period.

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1 CHAIRPERSON BUSCHING: Okay. Is there a
 2 second?
 3 COMMISSIONER DETRICK: I'll second that motion.
 4 I think that's fair. Fair as on outgoing member.
 5 COMMISSIONER SCARAMAZZO: Quit rubbing that in.
 6 CHAIRPERSON BUSCHING: It's been moved and
 7 seconded that I be appointed Chair for the next three
 8 months until we have the new commissioners on board, at
 9 which time the matter be readdressed for the remainder
 10 of 2006.
 11 Is there any further discussion?
 12 COMMISSIONER JOLLEY: I have a question, are
 13 you willing to serve as Chair for three months?
 14 CHAIRPERSON BUSCHING: Yes, I am.
 15 COMMISSIONER JOLLEY: Okay. Thank you.
 16 CHAIRPERSON BUSCHING: Any other discussion?
 17 I didn't ask if there were any members of
 18 the public that wish to speak to this, but I suspect
 19 not.
 20 If not, the Chair will call for the question:
 21 All in favor, say "aye."
 22 (Chorus of ayes.)
 23 CHAIRPERSON BUSCHING: Opposed, nay?
 24 Chair votes aye. Motion carries.
 25 Okay. Item 12, discussion and possible action

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1 on rescheduling the February 23rd Commission meeting to
 2 March 2, 2006. I'll address that.
 3 As my fellow commissioners know, I flew back
 4 from Las Vegas last night because I'm in the middle of
 5 arbitration up there and as soon as the meeting
 6 concludes today I'll be flying back up to Las Vegas.
 7 That's not scheduled to conclude until the evening of
 8 February 23rd.
 9 So, I've asked if it meets with the other
 10 Commissioners' schedules that we move that meeting to
 11 the following Thursday and meet at the regular time.
 12 And it will also give hopefully the opportunity for both
 13 of whoever the new commissions are to be in attendance
 14 then as well.
 15 COMMISSIONER JOLLEY: I'm in agreement with
 16 that.
 17 CHAIRPERSON BUSCHING: Okay. Commissioner
 18 Scaramazzo?
 19 COMMISSIONER SCARAMAZZO: Fine with me.
 20 CHAIRPERSON BUSCHING: The Chair will entertain
 21 a motion then.
 22 Commissioner Jolley.
 23 COMMISSIONER JOLLEY: Yes. I will move that we
 24 reschedule our February 23rd, 2006 Commission meeting to
 25 March 2nd, 2006 at 9:30 a.m.

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1 COMMISSIONER SCARAMAZZO: Second.
 2 CHAIRPERSON BUSCHING: Okay. It's been moved
 3 and seconded that we move the February 23rd Commission
 4 meeting to March 2nd at 9:30 a.m.
 5 All in favor, say "aye."
 6 (Chorus of ayes.)
 7 CHAIRPERSON BUSCHING: Opposed, nay?
 8 Chair votes aye. Motion carries.
 9 Okay. Item XIII, the best thing on the agenda.
 10 COMMISSIONER DETRICK: Does that mean you're
 11 happy to see me go?
 12 CHAIRPERSON BUSCHING: No, it does not mean it.
 13 It means that I originally was not on the Commission
 14 when Kathleen Detrick came onto the Commission. As I
 15 understand it, you were appointed in 2001 by Governor
 16 Napolitano at a time when the Commission was still in
 17 the formative stages. You came to the Commission with
 18 the 10 years of background as the City Clerk of Tucson
 19 and being in charge of campaign finances in Tucson, and
 20 brought with that all the experience of developing the
 21 campaign funding system down in Tucson.
 22 That experience has been absolutely, totally
 23 helpful here. And I have been very impressed -- and I'm
 24 sure we all have -- at how dedicated and committed
 25 you've been to doing the right thing throughout your

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1 five years of term. How you have reviewed all the
 2 written materials for every meeting and have listened
 3 thoughtfully to all the arguments and then always came
 4 up with sound and well-reasoned opinions for everything
 5 that has come before you.
 6 We are going to miss you terribly. Because of
 7 your dedicated attendance, you've been at virtually
 8 every single meeting and the Commission has been so well
 9 served by your presence. You'll be sorely missed.
 10 COMMISSIONER DETRICK: Thank you. That's very
 11 touching. I do really appreciate all the kind words.
 12 I will tell you I will miss all the
 13 Commissioners -- even you Gary, even though you are by
 14 telephone. I will miss you all. You're all very, very
 15 dedicated. I miss the Commissioners I served with
 16 before; Mr. Lemon, and all the other ones.
 17 I greatly appreciate the effort and the
 18 dedication of the staff. I think Todd comes into an
 19 office that has some truly, truly dedicated staff that
 20 really want to do the right thing, and that's -- that's
 21 wonderful. And I know Todd feels that way also.
 22 And the Attorney General's Office, how can I
 23 leave you out? You've been absolutely wonderful of
 24 giving advice that we didn't always want to hear but
 25 still all giving us good advice.

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1 I will tell you, I will not miss the drive,
 2 although it is an excuse to stop by the Ikia store on my
 3 way home.
 4 Other than that, it's been a wonderful
 5 experience. I've learned so much. I can't begin to
 6 tell you how much I learned. So, thank you very much.
 7 CHAIRPERSON BUSCHING: Well on behalf of the
 8 Commission, we want to present you with a plaque for
 9 your wall so that all the citizens of Tucson know that
 10 you have dedicated your time and effort and commitment
 11 to the Citizens Clean Elections.
 12 The plaque says, "Presented to Kathleen S.
 13 Detrick in appreciation of your outstanding service and
 14 dedications in the services of the Clean Elections
 15 Commission and the State of Arizona from February 1st,
 16 2001 to January 31st, 2006.
 17 "On behalf of the Citizens Clean Elections
 18 Commission, Tracey Bardorf, Marcia Busching, Ermila
 19 Jolley, and Gary Scaramazzo.
 20 Thank you very much."
 21 COMMISSIONER DETRICK: Thank you. Has it only
 22 been five years?
 23 CHAIRPERSON BUSCHING: Anyone else wish to
 24 address this matter?
 25 Mr. Lemon.

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1 MR. LEMON: I would like to as a former member
 2 of the Commission publicly thank Kathleen for her
 3 services. I recall that in the first few months of the
 4 Commission's existence, Kathleen had the Commission --
 5 hosted a meeting of the Commission in Tucson. And she
 6 and her staff explained their experience with the Tucson
 7 law and gave us a little taste of what was to come. It
 8 was immensely helpful and Kathleen has been very much
 9 interested in the work of the Commission from day one.
 10 And I echo your comments, Marcia, about her
 11 service. She has been a not only a sound member of the
 12 Commission, but a very good advisor and confidant in
 13 terms of what needs to be done to effectively administer
 14 the Act in a nonpartisan and objective way. And I have
 15 to say that her service has been absolutely superb.
 16 I have been critical at times of the drafters
 17 of the Act for doing some confusing things, but I have
 18 to say that they got at least one thing right; Kathleen,
 19 buried in the Act is a provision that relieves you from
 20 ever having to serve on the Commission again.
 21 COMMISSIONER DETRICK: Thank you for pointing
 22 that out.
 23 CHAIRPERSON BUSCHING: That's not a good thing.
 24 We need her back.
 25 COMMISSIONER JOLLEY: I would just like to say

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1 you will be sorely missed.
 2 COMMISSIONER DETRICK: Thank you very much.
 3 I'll miss you.
 4 CHAIRPERSON BUSCHING: Mr. Lang.
 5 MR. LANG: I've had the opportunity to work
 6 with Ms. Detrick both as Executive Director now and
 7 previously in Diana Varela's position with the Assistant
 8 AG.
 9 I don't know about Diana, but when I was at the
 10 AGs, when the term came up you always root for a really
 11 good commissioner. With Commissioner Detrick we got
 12 someone who has that practical election experience which
 13 Gene eluded to. Actually, it's not so much that she
 14 knew the nuts and bolts of the Act, she understood
 15 campaign, she understood the real world. I think that
 16 really made a big difference, I think, when the
 17 Commission was evaluating things.
 18 Her fair mindedness is something we look for in
 19 all commissioners. And she was also tough when
 20 necessary and I think we all agree that that's important
 21 as well.
 22 So, you eluded to the fact we have an
 23 outstanding staff. When I was considering for this job,
 24 a key component of that was Colleen McGee and Paula
 25 Ortiz will be there, because they're the backbone of

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1 this organization. Another key component is outstanding
 2 commissioners. And my regret is I only got to work with
 3 you for six months.
 4 So, thank you so much.
 5 COMMISSIONER DETRICK: Thank you.
 6 CHAIRPERSON BUSCHING: And I think there's
 7 another member of the public.
 8 MS. LUBIN: Barbara Lubin. Yeah, you get a lot
 9 of things to add to your wall.
 10 COMMISSIONER DETRICK: The walls are so bare.
 11 MS. LUBIN: The Clean Elections Institute
 12 thanks you for your dedicated service for this
 13 Commission. It's very difficult to find people who have
 14 the qualifications and willing to serve on this board.
 15 And as everybody said, you've just done an excellent job
 16 and we wish you well and please stay in touch.
 17 COMMISSIONER DETRICK: Thank you. Thank you.
 18 I appreciate it.
 19 CHAIRPERSON BUSCHING: Anyone else? It just
 20 keeps coming. Anybody else?
 21 COMMISSIONER DETRICK: Madame Chair, I would
 22 like to say welcome to Mr. Dierks. And I'm sure he's
 23 going to enjoy serving on the Commission as much as I
 24 have and he really comes on board with a great group.
 25 So, my welcome to him even though he's not here.

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1 CHAIRPERSON BUSCHING: And I agree
 2 wholeheartedly. Thank you.
 3 Item XIV, the report on pending litigation for
 4 David Burnell Smith from Assistant Attorney General
 5 Diana Varela.
 6 MS. VARELA: Thank you, Madame Chair and
 7 Commissioners. While I'm sure you've all heard, it's
 8 been in the papers, that the Court of Appeals affirmed
 9 the Superior Court's order or judgment. Part of which
 10 is ordering that Mr. Smith be removed from office.
 11 Part of going into the appeal of the matter, we
 12 had stipulated that there would be a stay of the
 13 Superior Court's order for five days after the Court of
 14 Appeals issued its decision. That stay expires tonight
 15 at midnight.
 16 This past Monday, Mr. Smith filed a Petition
 17 For Review in Arizona Supreme Court and also filed a
 18 Motion For Stay until the Supreme Court makes its
 19 decision. We had a telephonic conference with one of
 20 the justices on Monday. We filed our Response to his
 21 Motion For Stay Tuesday, and the Court has indicated
 22 that it will decide on the Motion For Stay sometime
 23 today. So, we're just kind of in waiting mode, but it
 24 will issue its decision on the stay today because it
 25 does recognize the other stay expires tonight at

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1 midnight.
 2 The Petition for Review, my understanding is
 3 the Court will take it up next week when it regularly
 4 meets. But, the Motion For Stay will be decided by
 5 close of business today.
 6 CHAIRPERSON BUSCHING: Okay. Any questions for
 7 Mr. Varela?
 8 If not, go to Item XV, call for public comment.
 9 This is the time for consideration and discussion of
 10 comments and complaints from the public. Action taken
 11 as a result of public comment will be limited to
 12 directing staff to study the matter or rescheduling the
 13 matter for further consideration and decision at a later
 14 date or responding to criticism.
 15 I believe there's Ms. Lubin.
 16 MS. LUBIN: Barbara Lubin with the Clean
 17 Elections Institute. Last night I attended the
 18 treasure's workshop and I would like to compliment
 19 Geneva and Michael on their presentation. And one item
 20 did come up that, being the old lady around here, you
 21 know, I have the knowledge of, and there's new staff who
 22 are doing their job in interpreting the laws and have to
 23 stick strictly to them without policy statements and
 24 interpretations from the Commission. And one of those
 25 was, if a candidate is just running their campaign out

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1 of their house, if they're using their existing extra
 2 bedroom or office, they're the owners as individuals of
 3 their computer that they're using and not putting an
 4 extra phone line or anything, just using their home
 5 phone also for a campaign fund, whether or not if that's
 6 a campaign expense, and if the campaign has to figure
 7 out the fair market value of however much space they are
 8 using and what percentage of the phone and computer they
 9 already own is being used.

10 And in the past, this Commission looked at it
 11 that if it's just a little campaign and using existing
 12 space that you use for other stuff, the campaign does
 13 not have to pay the candidate essentially for that use.
 14 And often when you do pay for its use, it ends up on
 15 your campaign between Barbara Lubin for Corporation
 16 Commission is paying Barbara Lubin every month for use
 17 of the home. So, it looks as though the candidate is
 18 personally profiting by conducting the campaign out of
 19 the home, which will be very impressionable especially
 20 for the down-ballot statewide races and election races
 21 to rent space and use up that limited amount of money.

22 So there was a gentleman who was in the
 23 audience who must be an accountant or something and
 24 staff was appropriately stating, well, look at the IRS
 25 guidelines, and he said -- I haven't had a chance to

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1 verify the IRS guidelines -- if the space is shared and
 2 equipment is shared, there's no requirement then to
 3 reimburse anyone for it.

4 And so I would just -- but everyone was just in
 5 a tizzy when the staff was appropriately saying
 6 literally what is on the books. I know you don't take
 7 action now, but I would ask you to look into the matter
 8 and come up with perhaps a policy statement or something
 9 like that to give guidance to candidates.

10 There were many candidates in the audience and
 11 people who were current office holders and have been
 12 office holders since before the Act was even passed in
 13 1988. They're like: Oh my goodness, we never had to do
 14 this before, what is this -- there's no rule
 15 promulgated.

16 So, I think it's an issue to clarify for the
 17 upcoming election.

18 CHAIRPERSON BUSCHING: Mr. Lang, could you
 19 study the matter and put it on the next agenda and
 20 report to the Commission on that, please?

21 MR. LANG: Yes.

22 CHAIRPERSON BUSCHING: Okay. Any other members
 23 of the public wish to speak?

24 Not to take away from Kathleen Detrick, but I
 25 heard just before the meeting that Ms. Funkhouser is

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1 going to be leaving our services and joining the
 2 Maricopa County Superior Court as special counsel to the
 3 chief judge. And I want to say that on behalf of the
 4 Commission, we have very much appreciated the sound
 5 advice given by Ms. Funkhouser, her dedication to the
 6 Commission and her good advice. And she too will be
 7 sorely missed as she pursues her new endeavors.

8 MS. LUBIN: It goes back to when she was
 9 Election Director at the Secretary of State's office
 10 when this law was passed and trying to figure it all
 11 out. And she's been coming to the meetings since there
 12 was a Commission and helping guinea pig candidates --
 13 she was polite and called some of us pioneers, but I
 14 still think we were guinea pigs -- going through the
 15 process.

16 MS. FUNKHOUSER: Thank you.

17 CHAIRPERSON BUSCHING: On behalf of the
 18 Commission, thank you very much.

19 MS. FUNKHOUSER: Thank you.

20 CHAIRPERSON BUSCHING: Any other members of the
 21 public wish to speak?

22 If not, Item XVI, adjournment. Is there a
 23 motion?

24 COMMISSIONER DETRICK: Madame Chair.

25 CHAIRPERSON BUSCHING: Commissioner Detrick.

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1 COMMISSIONER DETRICK: Reluctantly, I move that
 2 we adjourn this meeting.

3 CHAIRPERSON BUSCHING: Is there a second?

4 COMMISSIONER JOLLEY: I will second that.

5 CHAIRPERSON BUSCHING: It's been moved by
 6 Commissioner Detrick, reluctantly, and seconded by
 7 Commissioner Jolley that we adjourn this meeting.

8 All in favor, say "aye."

9 (Chorus of ayes.)

10 CHAIRPERSON BUSCHING: Opposed, nay.

11 Chair votes aye. Motion carries.

12
 13 (Whereupon the meeting concluded at 11:24 a.m.)
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1 C E R T I F I C A T E

2
3 I, Angela Furniss Miller, Certified Reporter,
4 do hereby certify that the foregoing pages numbered 1
5 through 105, inclusive, constitute a full and accurate
6 printed record of my stenographic notes taken at said
7 time and place, all done to the best of my skill and
8 ability.

9 DATED, at Phoenix, this 3rd day of March,
10 2006.

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14 Angela Furniss Miller, RPR
15 Certified Reporter (AZ50127)

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